RNI No. MAHBIL /2009/31744
Reg. No. MH/MR/South-318/2013-15

महाराष्ट्र शासन राजपत्र

भाग एक–ल

वर्ष ६, अंक ५] गुरुवार ते बुधवार, एप्रिल १०-१६, २०१४/चैत्र २०-२६, शके १९३६ [पृष्ठे ४०, किंमत : रुपये २३.००

प्राधिकृत प्रकाशन

(केंद्रीय) औद्योगिक विवाद अधिनियम व मुंबई औद्योगिक संबंध अधिनियम यांखालील (भाग एक, चार-अ, चार-ब आणि चार-क यांमध्ये प्रसिद्ध केलेल्या अधिसूचना, आदेश व निवाडे यांव्यतिरिक्त) अधिसूचना, आदेश व निवाडे.

IN THE INDUSTRIAL COURT, MAHARASHTRA, MUMBAI

Administrative Building, 1st Floor, Government Colony, Bandra (E.),
Mumbai 400 051, dated the 2nd April 2014.

Read.—(1) This Office Notification No. 1400, dated 26th December 2013.

(2) Government Notification No. Misc-2014/C.R. 55/Labour 9, dated the 28th March 2014.

NOTIFICATION

No. 711.—By virtue of the provisions contained in Regulations 11, 13, 18 and 19 of the Industrial Court Regulations framed under Bombay Industrial Relation Act, 1946 and in continuation of this office notification No. 1400, dated 26th December 2013, the President, Industrial Court, Maharashtra , Mumbai, has been pleased to declare that office of the Industrial Courts, Mumbai, Labour Courts, Mumbai. Commissioner for Employee's Compensation, Mumbai and wage Boards, Mumbai will be closed on Thursday the 24th April 2014 on account of Loksabha General Elections, 2014.

VIDYASAGAR L. KAMBLE,
President,
Industrial Court, Maharashtra, Mumbai,
(Head of the Department).

उद्योग, ऊर्जा व कामगार विभाग

मंत्रालय, मुंबई ४०० ०३२, दिनांक २ एप्रिल २०१४

अधिसूचना

महाराष्ट्र चौकशी न्यायालय, कामगार न्यायालये व औद्योगिक न्यायालये यांचे न्यायिक अधिकारी (सेवा प्रवेश, नियुक्ती आणि शिस्तभगंविषयक कार्यवाही) नियम, १९९९.

क्रमांक आयसीई.०३१४/प्र.क्र. १३/काम-६.—महाराष्ट्र चौकशी न्यायालय, कामगार न्यायालये व औद्योगिक न्यायालये यांचे न्यायिक अधिकारी (सेवाप्रवेश, नियुक्ती आणि शिस्तभंगविषयक कार्यवाही) नियम, १९९९ च्या नियम ५ नुसार प्रदान करण्यात आलेल्या अधिकारांचा वापर करून मा. उच्च न्यायालय, मुंबई यांनी त्यांचे पत्र क्र.ए. १२२६/८३/७६८/२०१४, दिनांक १४ मार्च २०१४ अन्वये केलेल्या शिफारशीनुसार " श्री. अझीझ मोहम्मद हुसेन तांबोळी यांची सदस्य, औद्योगिक न्यायालय, जळगाव " या पदावर नियुक्ती करण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

शैलजा सं. शिरोडकर,
कक्ष अधिकारी, महाराष्ट्र शासन.

In pursuance of clause (3) of Article 348 of the Constitution of India, the following translation in English of the Government Notification, Industries, Energy and Labour Department, No. ICE-0314/C.R. 13/LAB-6, dated the 2nd April 2014, Ordinary is hereby published under the authority of the Governor.

By order and in the name of the Governor of Maharashtra,

SANJAY DEGAONKAR,
Deputy Secretary to Government.

INDUSTRIES, ENERGY AND LABOUR DEPARTMENT

Mantralaya, Mumbai 400 032, dated the 2nd April 2014

NOTIFICATION

MAHARASHTRA JUDICIAL OFFICERS OF THE COURTS OF ENQUIRY, LABOUR COURT, INDUSTRIAL COURTS (RECRUITMENT, APPOINTMENT AND DISCIPLINARY ACTION) RULE, 1999.

No. ICE.0314/C.R. 13/LAB-6.— In exercise of the powers conferred by Rule 5 of Maharashtra Judicial Officers of the Courts of Enquiry, Labour Court, Industrial Courts (Recruitment, Appointment and Disciplinary Action) Rule, 1999 and with reference to the letter of Hon'ble High Court, Mumbai No. A. 1226/83/768/2014, dated 14th March 2014, the Government of Maharashtra hereby appoints "Shri Aziz Mohd Hussain Tamboli as Member, Industrial Court, Jalgaon."

By order and in the name of the Governor of Maharashtra,

SHAILAJA S. SHIRODKAR,
Desk Officer to Government.

IN THE INDUSTRIAL COURT AT MUMBAI

COMPLAINT (ULP) No. 729 of 1994.—Theatre Employees' Union Bombay, Chambers-318/319, Tardeo Air Conditioned Market, Mumbai 400 034.—*Complainant—Versus*—(1) M/s. Topiwala Theatre, Goregaon West, Mumbai 400 062. (2) Mrs. N. S. Desai, Administrator to the estate of (Late) Mr. S. N. Desai in respect of Topiwala Theatre, Mumbai -400 062. (3) Mrs. Sudha M. Samant, Contractor appointed by Mrs. N. S. Desai, Mumbai 400 062—*Respondents.*

In the matter of complaint of unfair labour practices under item 1(a) of Sch. II and items 6 and 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971.

PRESENT.— Shri V. P. Rothe, Member, Industrial Court, Mumbai.

Appearances.— Ms. Trivedi, Advocate for the Complainant Union ;

Mr. Mandavia, Advocate for the Respondent.

Oral Judgment

(delivered on 24th July 2002)

1. The complaint has been filed under items 6 and 9 of Sch. IV and under item 1(a) of Sch. II of the M.R.T.U. and P.U.L.P. Act, 1971. The Complainant is Theatre Employees Union. Respondent No. 1 is M/s. Topiwala Theatre situated at Goregaon West, Mumbai 400 062. Respondent No. 2 Mrs. N. S. Desai was the Administrator to the estate of the Late Mr. S. N. Desai, the then owner of Topiwala Theatre. The Complainant union has contended that 7 concerned workmen were employed in Topiwala Theatre as door-keepers, sweepers etc. They were not paid their wages as per the B. B. Tambe Award.

2. The Respondent No. 2 Mrs. N. S. Desai is the widow of the late Mr. S. N. Desai *i.e.* the owner of Topiwala Theatre. In her life time, the Respondent No. 2 was managing the affairs of Topiwala Theatre as Administrator. The Respondent No. 3 Mrs. Sudha Mohan Samant is the sister in law of the Respondent No. 2. It is the case of the Complainant union that the Respondent No. 2 appointed some of the workmen in Topiwala Theatre through the Respondent No. 3.

3. It is contended by the Complainant union that they were renderring 12 hours duty in the Respondent No. 1. Theatre. However, their salary was less. They are entitled to get wages as per the Minimum Wages Act applicable to the Cinema Industry. In collusion with the Respondent Nos. 2 and 3, the services of the concerned 7 workmen were exploited by the Respondent Theatre and they have been deprived of the benefits of the service conditions to which they were entitled as per the terms of Tambe Award. The Complainants workmen were treated on par with the other workmen, who were permanent and being paid with the bonus, *ex-gratia,* allowances etc. The muster roll was not maintained for inclusion of the names of the Complainants workmen. Their request to enter their names in the muster roll and extending to them the benefits of the service conditions at par with other permanent workmen and as per the Tambe Award was turned down. The Respondents were not bothering to improve their service conditions for the year 1994. The Complainants workmen have joined the Complainant union and the help of the union was sought for redressal of their grievances. The workmen had insisted for making them permanent for entering their names on the muster roll of Topiwala Theatre. It is the say of the Complainants that the Respondents Nos. 2 and 3 are the closed relatives. The concerned 7 workmen, who are for the name sake appointed by the Respondent No. 3 virtually and for all practical purposes are the employees of the Respondents No. 1 and 2, only. But the Respondents have branded them as the contract labour as a matter of device with a view to exploit them and deprive them of the benefits, and the service conditions to which they are entitled. Hence, in the present complaint, the Complainants have sought the implementation of the Award dated 27th June 1980 passed by the then Learned Industrial Tribunal Shri B. B. Tambe in Reference (VA) No. 01 of 1979. It is prayed by the Complainant union that it be declared that the Respondents Nos. 1 to 3 have engaged in unfair labour practices under item 1(a) of Sch. II and under items 6 and 9 of Sch. IV of the MRTU & PULP Act, 1971.

4. In the Written Statement at Exh. C-2, it is submitted by the Respondents Nos. 1 and 2 that the complaint is not maintainable. The Complainants are not the employees of the Respondents No. 1 and 2, but they are the employees of the Respondent No. 3 Mrs. Sudha Samant. Hence for mis-joinder of party, the complaint is liable to be dismissed. It is admitted by the Respondents No. 1 and 2 that the services of the employees employed in Topiwala Theatre are governed by the Award passed by Shri B. B. Tambe, the then Industrial Tribunal, Mumbai. It is also submitted that being the widow of the late Mr. S. N. Desai, the owner of the Topiwala Theatre, the Respondent No. 2 is the Administrator of the estate of her husband and the Respondent No. 3. Mrs. Sudha Samant is the relative of the Respondent No. 2. Mrs. Sudha Samant had taken the contract for cleaning the Theatre. Thus, the Complainant Union workmen are not the employees of the Respondents Nos. 1 and 2 and thus there is no question of exploiting their services. In the Written Statement of the Respondents No. 1 and 2, it is submitted that the Management had never called these workmen and threatened them and for the practical purposes, these concerned 7 workmen should be treated as the workmen of the Respondents Nos. 1 and 2.

5. In the affidavit and the written statement of Mrs. Sudha Samant *i.e.* the Respondent No. 3 at Exh. CB-2, it is submitted that she had not indulged in any unfair labour practices under items 1 of Sch. II and under items 6 and 9 of Sch. IV of the MRTU & PULP Act, 1971. She is an independant contractor and had taken the contract of cleaning and house keeping of the Theatre premises. She is having her own muster roll and all the workmen were paid their wages under the muster roll. They were paid extra show allowances seperately and the bonus as per the rule.

6. On the pleadings of the parties, my Learned Predecessor has framed the Issues at Exh.-5, I reproduce the Issues as under and record my findings against them for the reasons given hereinafter :–

Issues	*Findings*
(i) Whether the Respondents have engaged in unfair labour practices falling under item 1(a) of Sch. II and under items 6 and 9 of Sch. IV of the MRTU & PULP Act, 1971 ?	Yes.
(ii) Whether the Complainant union is entitled to the reliefs as prayed under Para 9(c) of the complaint No. 1 ?	Yes.
(iii) Whether the seven concerned workmen are the direct employees of the Respondent No. 1 ?	Yes.
(iv) What order ?	As per order below.

Reasons

7. *As to the Points Nos. (1) and (3)*– This issue is important issue, as it necessary to find out and whether there is any evidence on record that the 7 concerned workmen are the direct employees of the Respondent No. 1. The oral evidence of Bhau Dinu Bhosale UW-1 and Jay Tiwari UW-2 adduced on behalf of the Complainant union. Both of these witnesses have stated that one Mahindra Mandavi, who was the Manager of Topiwala Theatre appointed them in the said Theatre. Their names were not included in the muster roll till 1990. The Respondent No. 2 used to pay salary to them and since 1985 they were working in the Topiwala Theatre. It is their specific case that they never entered into the contact with the Respondent No. 3 Mrs. Sudha Samant, regarding their employment. Out of the 7 concerned workmen, Kannu Roshanlal, Upendra and Gurav were working as the sweepers and remaining 4 persons were working as the door keepers. They were not getting their salary as per Tambe Award. The contributions of their P. F. were deducted from the year 1990 to 1991. The original provident fund slips are filed by them at Exh. U-12 collectively. In the cross examination of the witness Bhau Daji Bhosale UW-1, by the Respondents, it has brought on record that prior to 1994, the salaries of these workmen were not paid by Mrs. Sudha Samant, the Respondent No. 3. It is further clear from the record that the payment of wage register of these workmen was not maintained by Mrs. Sudha Samant.

8. The next witness UW-2 Jay Tiwari is the Joint Secretary of the Theatre Employees Union. He states that the workmen of the Theatre are governed by Tambe Award. All the concerned 7 workmen were getting the benefits of the service conditions at par with the other permanent workers. However, they did not get these benefits from the date of their joining till April, 1997. Thus, from the date of their joining till April, 1997, the workmen are entitled to get the benefits as per Tambe Award. It is denied by this witness UW-2 Jay Tiwari that all these 7 workmen were on the muster roll and the pay roll of the Respondent No. 3 Mrs. Sudha Samant. Thus, the permanency benefit should be given to these workmen from 1990 onwards.

9. In the oral evidence of the Respondents' witness Mr. Mohan Samant as per Exh. CW-1 it has been stated that the present workmen were not parties to the said Reference filed before Shri Tambe or Shri Hirurkar. When these workmen were made permanent employees of the Respondent No. 1 Theatre, they have been given all the benefits from 1994 onwards. In the cross examination of this witness Mr. Mohan Samant by the Complainant union, it is admitted by him that he cannot say since when Mrs. Sudha Samant was engaging in the business of trade as a Contractor. He did not know since when Mrs. Sudha Samant was supplying workmen to Topiwala Theatre as a Contractor or the business activity. Mrs. Sudha Samant was carrying out is not known to this witness. In para 5 of his cross examination, the Respondents witness Mr. Mohan Samant has stated that he has not produced any documentary evidence to show that the Complainants were absorbed in the employment of the Theatre from 1994 onwards. The order on Exh. U-2 application passed by my Learned Predecessor on 2nd August 1995 has been implemented by this witness. He did not produce any documentary evidence to show that the complainants were made permanent in the year 1994-95. Thus, in clear and unequivocal term, it is admitted by the witness CW-1 Mr. Mohan Samant that the services of the Complainants were made permanent in the year 1994-95. Though the witness CW-1 Mohan Samant is aware about the agreement between the Complainants and Mrs. Sudha Samant, that has not been produced on record. He cannot say as to date since when Mrs. Sudha Samant ceases to be the Contractor. It is admitted by the CW-1 Mr. Mohan Samant that the Complainants were doing the work of Sweepers and Door-keepers. However, he do not remember since when the Complainants were working with the Respondents. It is further admitted that there is nothing on record to show that there has been any contract in between the present Complainants and Mrs. Sudha Samant, the Respondent No. 3. It is not denied by the witness CW-1 Mohan Samant that the Complainants were doing the work from 1990 in the Respondent No. 1 Topiwala Theatre. He had started payment of wages to the Complainants as per Tambe Award. These wages were paid from July, 1994 onwards. From the year 1990 to 1994, Mrs. Sudha was maintaining the records of salary and pay. No letter was given by Mrs. Sudha Samant for absorbing these concerned 7 workmen as regular employees of the Respondent No. 1 Theatre.

10. The Learned Counsel for the Complainant union has pointed out my attention to the provisions of Tambe Award and submitted that the workmen ought to have been made permanent after the period of 3 months on completion of their probationary period. The settlement dated 24th February 1992 is clear with this respect. So also, the Demand No. 17 of Hirurkar Award discussed about them. Similar provision is made in Tambe Award. The Learned Counsel for the Complainant union has also pointed out to me the rates of special allowance for the period from 1st January 1994 to 30th June 1994 fixed by the office of the Commissioner of Labour for employment in the Cinema Industry. The Learned Counsel for the Complainant union has pointed out my attention to the document filed under the list of documents Exh. U-12. These documents are the subscription slips of the Employees' Provident Fund Scheme. The UW-1 Bhau Bhosale shown as a member of the Employees Provident Fund Scheme for the year 1990-1991. The P. F. Slip of the similar nature of the employee Sanjay Arjun, Ramesh Bhosale, Kannu Roshanlal, Upendra Prabhu etc. are filed on record. The Learned Counsel of the Complainants has submitted that the question of employer-employee relationship does not arise, as it is specifically admitted by the Respondents Nos. 1 and 2 that the Complainants are their employees and they have been treated so from April, 1994. It is urged by the Learned Counsel of the Complainants union that now the formality of giving them the arrears at par with the permanent employers for the period from 1990 to 1994 is required to be decided. Whatever wages got to them and the wages for which they were entitled were computed by the Learned Counsel of the Complainants as per the list of documents filed alongwith the statement showing comparison of salary paid by the Respondent No. 1 Theatre and the salary payable as per the Tambe Award given in the chart filed by the Learned Counsel of the Complainant union.

11. The Learned Counsel of the Respondents has urged that as per the judgement reported in *2001 I CLR 532* Vividh Kamgar Sanghtana *V/s.* Kalyani Steel Limited, if there is a dispute as to whether the employees are the employees of the company or the contractor, then that dispute must first be got ressolved by raising a dispute before an appropriate forum. It is only after the status of the workman is established, a complaint under the MRTU & PULP Act can be filed. The Learned Counsel has also relied upon the Judgement reported in *2001 I CLR 754* in Cipla Limited *V/s.* Maharashtra General Kamgar Union. In this judgement, it is held that when the relationship of employer and employee between the Appellant and workmen were disputed, the question of unfair labour practices cannot be enquired into at all. If the employees are working under the Contractor coverd by the Contractor Labour (Regulation and Abolition) Act, then it is clear that the Labour Court or the Industrial Adjudicating Authority cannot have any jurisdiction to deal with the matter as it falls within the province of an appropriate Government to abolish the same.

12. So far as our case is concerned, it is unequivocally admitted by the witness of the Respondents Nos. 1 and 2 that the status of the concerned 7 workmen of this complaint as the employees of Topiwala Theatre has been given to them in the year 1994 and thereafter. It is further admitted that prior to 1994, these workmen were doing the work in the Respondent No. 1 Theatre the said fact has also not been disputed. Thus, it is self evident on record that they were deprived of the wages as per the Tambe Award, for all this period. The copy of Tambe Award is on record and the terms of the said Award are very much clear. The interim order was also passed by my Learned Predecessor on application Exh. U-2 for grant of minimum wages to the workmen of this complaint. But the import of the ruling reported in the case of Kalyani Steel and Cipla Limited could have been applied to this case, had there been any such dispute regarding the status of the Complainants workmen. As such, the dispute has not been arisen, there is no question of applying the principle laid down in the abovesaid 2 rulings.

13. In the ruling reported in *2001 III CLR 1025*, the Division Bench of Bombay High Court was pleased to observed as under; in the case of Hindustan Coca Cola Bottling S/W Pvt. Ltd. *V/s.* Bhartiya Kamagar Sena & Others :—

> "After referring to Supreme Court judgement in the case of Cipla Limited, it is observed that it would be apparent from the above observations of the Supreme Court that if the employer-employee relationship is established by the competent forum, *viz.* the Industrial Tribunal or Labour Court under the Industrial Disputes Act, or the employer employee relationship is undisputed or indisputable, then the complaint under the MRTU & PULP Act would be maintainable. In a case where the employer had never recognized the workmen as his employees and throughout treated these persons as employees of the contractors, then the Court constituted under sec. 28 of the MRTU & PULP Act will have no jurisdiction to entertain the complaint unless the status of relationship of employer-employee is first determined in a proceedings under the Industrial Disputes Act."

In our case, as pointed out earlier, the PF slips of the concerned workmen are on record, which shows that in the year 1990-1991 their PF contributions have been paid by the Respondents.

14. It is admitted by the witness CW-1 of the Respondents that all the benefits at par with the permanent workmen were given to the Complainants from 1994 onwards. It is a matter of common knowledge that in any employment, no employee will be made permanent from the day first. What tempted to the Respondents Nos. 1 and 2 to make permanent 7 workmen from 1994 onwards at once has not been clarified. The Respondents failed to prove the fact that the Complainants were the employees of the Respondent No. 3, Mrs. Sudha Samant. The wage register and the memorandum of the settlement that has been produced by the Respondents shows that this settlement was taken place in between the Labour Contractor Mrs. Sudha Samant and Bhartiya Shramik Sena, but whether the present Complainants were party to the said settlement and in the settlement itself it has been made clear that the existing 11 workmen had worked more than 240 days. This settlement is taken place on 7th September 1992. On the basis of such imperfect evidence, it cannot be said that there is any dispute as to the relationship between the Complainants and the Respondents Nos. 1 and 2 as employer and employee, has been arisen, and there is no need to refer this dispute before the appropriate forum. Thus, on

the basis of the facts and the oral evidence of the witnesses of the Complainants and the Respondents, I find that the present Complainants were the employees of the Respondents Nos. 1 and 2 for the relevant period *i.e.* 1990 onwards and they were not paid on par with the permanent workers and as per the terms of Tambe Award. They were certainly entitled to get the wages on par with other permanent workmen and hence I find that failure to implement the award is the violation of item 9 of Sch. IV of the Act. The Respondents Nos. 1 and 2 have certainly violated it. Hence, both the Respondents are guilty of the unfair labour practices. Accordingly, I answer the Points No. (1) and (3) accordingly.

15. *As to the Point No. (2).*—This issue pertains to the prayer clause 9(*c*) of the main complaint. As per this prayer clause, whether the Respondents Nos. 1, 2 and 3 can be directed to make these 7 concerned workmen permanent and to enter their names on the muster roll of the Respondent No. 1 Theatre and to extend them the benefits or service conditions under the Tambe Award such as wages, dearness allowances, allowances etc. to said 7 workmen on par with the other permanent workmen and to pay them the errears of wages, dearness allowance etc. As discussed earlier, all the 7 concerned workmen of this complaint are getting wages at par with other workmen from the year 1994, onwards. So far as the wages from 1990 to 1994 are concerned, they are certainly entitled to get the wages on par with other employees. The Learned Counsel of the Respondents has argued that such a relief cannot be given retrospectively as the claim of the Complainants is barred by limitation. When the cause of action is of a recurring nature, the relief as prayed by the Complainants can be given and the complaint itself is also maintainable. To sum up, the present Complainants are entitled to get the benefits of Temde Award from 1990 to 1994 and the Respondents can be directed to give them the said benefits accordingly. Thus, the unfair labour practice under items 6,4,59 of Sch. IV of the MRTU & PULP Act is proved against the Respondents. Hence, I answer the Issue No. (3) accordingly and pass the following order :–

Order

(*i*) Complaint (ULP) No. 729 of 1994 is hereby allowed.

(*ii*) It is hereby declared that the Respondents have engaged in unfair labour practices under items 6 and 9 of the Sch. IV of the MRTU & PULP Act, 1971.

(*iii*) The Respondents are hereby directed to cease and desist from engaging in unfair labour practices.

(*iv*) They are further directed to give benefits to the 7 workmen of this complaint at par with other permanent employees as per the Tambe Award for the period 1990 to 1994.

(*v*) The claim of the Complainant union under item 1(*a*) of Sch. II of the MRTU & PULP Act 1971 is hereby disallowed. However, the circumstances of the case, there shall not be any order as to the costs.

V. P. ROTHE,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated the 24th June 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 2nd August 2002.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI V. P. ROTHE, MEMBER

REVISION APPLICATION (ULP) No. 91 of 2001.—M/s. Cambata Aviation Ltd., Juhu Aerodrome, Mumbai 400 054, (2) Shri R. A. Pathak, Personnel Manager, M/s. Cambata Aviation Ltd., Juhu Aerodrome, Mumbai 400 054—*Applicants Versus* Shri Prakash Sitaram Pawar, C/o.–G-2, Garden View, E. S. Patanwal Marg, Byculla, Mumbai 400 008—*Opponent.*

CORAM.— Shri V. P. Rothe, Member.

Appearances.— Shri Sunil Shroff, Advocate for Applicants;

Shri S. A. Sawant, Advocate for Opponent.

Judgment

1. Being aggrieved by the order dated 4th April 2001 passed by the 7th Labour Court at Mumbai, the original Respondent and the present Applicant has filed this Revision Application.

2. A few facts of the proceeding are useful for determining the controversies in between the parties. The Complaint (ULP) No. 761 of 2000 was filed before the Labour Court by the Respondent against the Complainant. In the application Exh. U-2 of this complaint, the Respondent has prayed that he be allowed by the present Applicant to resume on duty or alternatively, the Applicant may be directed to pay him 100% back wages. This complaint was filed under items 1(*a*) (*b*) (*d*) and (*f*) of Schedule IV of the MRTU & PULP Act. The Respondent has joined the services of the Applicant in 1987. The Applicant is the Aviation Cargo Agent. The Respondent was drawing the salary of Rs. 5,500. The Respondent was removed from service with other workers from 24th December 1994. The Respondent was again taken back in service in February, 1999 and again not allowed to join his duties from September 23, 2000. On 25th September 2000, the Respondent has visited to the Personnel Manager of the company. He had insisted him to deposit Airport Entry Permit. It is the case of the Respondent that the Applicant was annoyed with him as the Respondent has filed some papers in pending case of another employee by name Shri Gopalan. Since then, the Respondent was not allowed to join on duties. It is the case of the Respondent that this amount to illegal termination of the service.

3. Than the reply was filed by the present Applicant and it was submitted on behalf of the Applicant that the Respondent is involved in the criminal case. Therefore, he stopped reporting for work. The Respondent did not send any communication to the company for remaining absent unauthorisedly. Now, the Respondent has put forth concocted story of oral termination of service. It was also submitted by the Applicant that the complaint itself is not maintainable.

4. As per the order dated 4th April 2001, the Learned Judge of the 7th Labour Court has allowed interim relief application and it was directed to the present Applicant to allow the Respondent to resume on duty within a month from the date of the order. In the alternative, the Labour Court has directed that if the Respondent does not want to allow the Complainant to join the duty during the pendency of the complaint, they should be directed to pay 70% of the last drawn wages to the Complainant within one month from the date of the order.

5. This order of the Labour Court is challenged in this Revision application.

6. The business activities of the Applicant company carried out at the International Airport. This place is accessible only to the authorised persons. For the entry inside the Airport, the mandatory requirement of permanent identity card is required to be fulfilled. A person who is employed by applicant is required to work in the Airport area, for him also, such permit is required. In the year 1995, permanent identity card for the Airport Entry Permit of the Respondent and other employees were cancelled by the Police due to the pendency of the criminal cases against them. As a result of which, the Respondent and the other person could not enter into Airport premises. Being aggrieved by this, the employees have filed a writ Petition before the Hon'ble High Court, Bombay. Those writ Petitions came to be dismissed. Presently, there were two criminal cases pending against the Respondent and active member. The Respondent came to be acquitted from one of the case and one criminal case is still pending against him. On 15th August 2000, one letter was received by the Applicant company from

Sahar Police Station. The Respondent of this case did not resume on duty from 23rd September 2000 and collected his salary on 25th September 2000. Since then, the Respondent is absent unauthorisedly. He had put up the connected story before the Labour Court regarding the alleged oral termination. In view of the cancellation of PIC the Respondent was not entitled to enter the International Airport premises. The permanent identify card *i.e.* for short PIC is sanctioned by the Police Officer of the rank of Deputy Commissioner. The said authority has cancelled PIC of the Respondent as per letter dated 5th January 2001. This position is undisputed. The Respondent cannot enter into the Airport promises for want of valid Airport entry permit and, therefore, the interim relief application moved by the Respondent was itself infractuous. The Applicant company has no control over the action taken by the Police. It did not terminate the service of the Respondent. The Applicant company is abiding by the police order and thereby not engaging this Respondent in their employment. The Trial Court ought to have passed the interim order in view of the settled position in law about the working on the International Airport premises, it failed to appreciate the documents filed on record in this respect. The Trial Court failed to appreciate undisputed fact that due to pendency of the Sessions Court Trial against the Respondent, he is not entitled to obtain Airport Entry Permit. The Trial Court has not taken into consideration the issue of jurisdiction. It failed to appreciate the fact that the Respondent was required to approach the concerned authority including the police for revocation of his Entry Permit. The Respondent was earlier allowed to resume on duty pending the criminal case through oversight and thus, the Court has came to the wrong conclusion. The impugned order required to be quashed and set aside.

7. I have heard Learned Counsels of both the parties at length. I have perused the record and proceeding of the Lower Court and also perused the documents placed on record of this proceeding. The following are the points arise for my determination :–

Points	*Findings*
(*i*) Whether the impugned order dated 4th April 2001 passed by the 7th Labour Court at Mumbai is illegal, perverse and contrary to law ?	Partly Yes. Order modified.
(*ii*) What order ?	As per order below.

Reasons

8. The Learned Counsel of the Applicant company Shri Shroff has submitted vehemently that the Police Authorities are not allowing the Respondent to enter into Airport premises on account of his involvement in the criminal case. The Applicant company is carrying out its activities inside the Airport. If the Respondent is ready to report on duty with the Airport Entry Permit, the Applicant company can provide the work to the Respondent. Thus, the requirement of Airport Entry Permit is the preliminary condition for remaining in the job of the Applicant company. It is urged by the Learned Counsel that on account of involvement of the Respondent in the criminal case, the Airport Entry Permit of the Respondent came to be confiscated It is accepted position of law that as per the service conditions of the appointment letter of the Respondents, they are governed. It is an admitted fact that the Applicant company did not inform to the Respondents that their services have been terminated or he is placed under suspension on account of his involvement in the criminal case.

9. The Learned Counsel of the Respondent has submitted that unless the “due process of law ” is followed, the services of the Respondents cannot be terminated. The question remains then that the Respondent is in service. Considering this aspect, it appears that the Learned Labour Court was clearly misdirected itself and thereby the Applicant company was directed to allow the Respondent to join his duties. One thing is clear from the record and facts of the case that it is for the Respondent to prove the fact that “ these particular were the terms and conditions of his appointment. ” Whether the Applicant company had not allowed the Respondent to join his duty or the Respondent could not join the duty for want of Airport Entry Pass on account of his involvement in the criminal case is required to be appreciated in the light of the

evidence which was to be adduced before the Labour Court. At this interim stage, the Learned Labour Court ought not to have granted back wages and could not have amply rewarded to the person involved in the crime as per the say of the Learned Counsel of the Applicant. If the Criminal Court is giving the clean cheat to the Respondent, then it can be seen whether the back wages can be paid to the Respondent. If the Respondent himself furnished entry pass and attended the duty, then the Applicant company can be asked to allow the Respondent to join his duties. Without furnishing the entry pass by the Respondent how he can be allowed to work inside the Airport premises ? from the letter dated 5th January 2001 filed under Exh. C-4, it appears very clear that the General Manager of the Applicant company was informed by the Regional Deputy Commissioner of Security that PIC of Shri. Pawar *i.e.* the Respondent has been cancelled. Thus, at the instance of the police or as per the action taken by the police, the PIC of the Respondent came to be cancelled which resulted into the loss of his job. In C.R. No. 20 of 1994 under Sections 307, 146, 147, 148 and 149 of Indian Penal Code, the present Respondent along with others were arrested by the Sahar Police Station and the chargesheet against the said persons filed. It is for the Respondent to prove what were the terms and conditions of his service. It is for the Respondent to prove how he is entitled to get the work without Airport Entry Permit. Without looking into this aspect of the matter, the Learned Labour Court has straightway directed to the Applicant company to allow the Respondent to join his duty. These directions were given by the Learned Labour court while passing the order on the interim relief application. Such directives cannot be enforced. What is the use of such directives ? To this extent, it clearly appears that by giving such directions, the Learned Labour Court has committed the error of law. In the revisional jurisdiction, this Court can interfere to set right such error.

10. As per the interim order, the Learned Labour Court has directed the Applicant company to pay 70% of the last drawn wages to the Complainant. It is self-evident from the record that on account of the involvement of the Respondent in the crime, the entry of the Respondent was prohibited within the Airport area. By directing the Applicant company to pay 70% of the wages to such person, the Learned Labour Court has rewarded the prize. It is not that any guilt is proved against the Respondent. What is clear from the record is that because of the self-created problem, the Respondent could not join his duties. No action has been taken against him by the Applicant company. It is not clear what is the reason for inaction on the part of the Applicant company. Why the Applicant company is not taking any action against the Respondent ? Why the service of the Respondent is not terminated by them by following due process of law is not known ? Till that time, the Applicant company must deposit 70% of the wages of the Respondent. However, the Respondent is not entitle to allow these wages till the question of continuity of service is decided. The Respondent cannot be resumed on duty as stated earlier. As per the order of the Learned Labour Court, 70% of the wages of the last drawn wages of the Respondent are required to be paid to the Respondent by the Applicant company. Instead of making the payment of wages to the Respondent, the order of the Learned Labour Court is required to be modified to the extent that the Respondent company shall deposit 70% of the last drawn wages of the Respondent in the Court from the date of application Exh. U-2 *i.e.* 29th September 2000.

11. I am fully concious of the fact that this Court has got limited powers while exercising the revisional jurisdiction. As pointed out earlier, the order of the Learned Labour Court is required to be modified to the above extent in view of its futality to enforce. The Learned Counsel of the Applicant company Shri Shroff relying upon the ruling reported in *The Spices and Oils Seeds Exchange Ltd.,* V/s. *Suhas Anant Kulkarni & Ors., 1986-II-CLR-479* and the ruling reported in *G. S. Khairkar* V/s. *Camlin Limited, 1997-II-CLR-1164.* In the first ruling, it was held by the Hon'ble Bombay High Court that the complaint under item 1 of Schedule IV is premature when the order of dismissal is yet to be passed. In para 9 of the above said judgment, Hon'ble High Court discussed above the powers of the Industrial Court under Section 44 of the MRTU & PULP Act. In the second ruling relied upon by the Learned Counsel of the Applicant company, it is held that the Industrial Court cannot reappreciate the evidence. While exercising its revisional jurisdiction.

12. The Learned Counsel of the Applicant company also relies upon the judgment and the circulars filed under the list Exh. C-5. The circular No. 19/98 dated 7th August 1998 issued by the Officer on special duty for Commissioner and Security B. C. A. S. Mumbai. This circular is about enforcing the control at the Airport. All the employees working at the Airport must display conspicuously their P.I.C. while on duty at the Airport. The Learned Counsel of the Respondent has objected for filing of this circular at this stage. I do not find any reasons for not allowing its production. The Learned Advocate of the Applicant company also relies upon the order passed below application Exh. U-2 in Complaint (ULP) No. 320 of 2001 and the Award passed in Reference (IDA) No. 695 of 1995. The Learned Counsel of the Respondent relying upon the judgment passed in Complaint (ULP) No. 91 of 1996 and submitted that the Applicant company is required to allow the Respondent to work as his services are not terminated. As pointed out earlier, without P.I.C. the Avitation Official would not allow the Respondent to work at Airport and the P.I.C. of the Applicant company came to be ceased on account of his involvement in the criminal case. For these reasons, it is for the Respondent to get exhonerated from the criminal case and to get entitled himself for getting the P.I.C. Now the position is that the Respondent does not possess the essential requisites to be fit for work at the Airport. In such circumstances, how the Applicant company can be directed to allow the Respondent to resume duty within a month as directed by the Labour Court. For these reasons. I find that on production of P.I.C. by the Respondent, the Applicant company is hereby directed to allow the Respondent to resume duty. To this extent, the modification is necessary in the order of the Labor Court.

13. Similarly, as the Applicant company did not take any action against the Respondent despite of the knowledge of his involvement in the criminal case, the company must deposit the wages of the Respondent in the Court. The Respondent shall not entitle to withdraw the wages till the decision of Complaint (ULP) No. 671 of 2000 and till the absence of the Respondent on duty is determined.

14. The Learned Counsel of the Respondent has argued that the Respondent has been provided with work despite the pendency of the criminal case from February, 1999 to September, 2000. It means that the production of P.I.C. was not necessary for work at the Airport. It is already pointed out that P.I.C. came to be issued to the Respondent in the above said period on account of appointment of the mistake on the part of the new official of the Airport. It is not that if such mistake occurred, could not be rectified by the Authority concerned. For these reasons, I answer the point No. 1 accordingly and pass the following order :–

Order

(*i*) The Revision Application is partly allowed.

(*ii*) The impugned order dated 4th April 2001 passed by the 7th Labour Court, Mumbai in Complaint (ULP) No. 761 of 2000 is modified as under :–

" The Respondents (Present Applicant) is directed to allow the Complainant (present Respondent) Shri Prakash S. Pawar to resume duty, on production of P.I.C. by him. The Respondents are further directed to deposit 70% of the last drawn wages of the Complainant, in the Labour Court, from the date of order on application Exh. U-2 *i.e.* application dated 29th September 2000. The Complainant and the present Respondent is not entitled to withdraw the wages till the question regarding the absence period of Complainant and continuity of his service, is decided.

No order as to costs.

V. P. ROTHE,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated the 23rd July 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 31st July 2002.

IN THE INDUSTRIAL COURT AT MUMBAI

REVISION APPLICATION (ULP) No. 74 of 1998.—Mr. Manoj Dattatraya Randive, E/16, Gurupushyamrut CHS, 90 Feet Road, Mulund (East), Mumbai 400 081.—*Complainant—Versus*— (1) The Indian National Press (Bombay) Limited, Free Press House, 215, Free Press Journal Marg, Nariman Point, Mumbai 400 021. (2) Navshakti Free Press House, 215, Free Press Journal Marg, Nariman Point, Mumbai 400 021.—*Respondents.*

In the matter of revision application under Sec. 44 of the M.R.T.U. and P.U.L.P. Act, 1947.

PRESENT.— Shri M. L. Marpale, Member, Industrial Court, Mumbai.

Appearances.— Ms. Hutoxi Tavadia, Advocate for Complainant ;

Mrs. G. L. Govil, Advocate for Respondents.

Judgment and Order

(5th August 2002)

1. The Applicant in the present revision application was the Complainant in the complaint being Complaint (ULP) No. 35 of 1994 filed against the present Opponents before VIII Labour Court, Mumbai for having engaged in unfair labour practices under item 1(a), (b) and (f) of Sch. IV of M.R.T.U. and P.U.L.P. Act. (Hereinafter the applicant is referred to as "the Complainant employee" and the Opponents are referred to as "the Respondents").

2. The Complainant employee approached the Labour Court with the following facts :–

The Respondent No. 1 is a proprietory concern of daily newspaper *viz.* Free Press Journal and Navshakti.

The Respondent No. 2 is the establishment of both the newspapers. It is alleged that he was Sub-Editor working with the Respondent No. 2 from 16th January 1992. Before that, he was working as a Sub-Editor of the daily newspapers 'Samana'. It is further contended that on 16th January 1992, one Mr. D. B. Joshi *alias* Bhau Joshi the Acting Editor of the Respondent No. 2, asked him to join the Respondent No. 2 as Sub-editor. He therefore started working as Sub-Editor with the Respondent No. 2. He was assurred that he would get his appointment letter at the earliest. On 10th or 12th February, he received a copy of the agreement whereby he was supposed to work as Sub-Editor with the Respondent No. 2 for 2 years on stipend at the rate of Rs. 1,500 per month and to pay cash security of Rs. 500. Leter on, the condition of cash security was waived by a letter dated 21st February 1992. Shri Bhau Joshi orally admitted that the said agreement was the paper arrangement and therefore, the condition of cash security was waived. It is further contended that he protested the said agreement, but he was told by Shri Bhau Joshi that it was a nominal agreement/contract and it was a mere formality and he was a regular Sub-Editor. Shri Bhau Joshi also told him that he would be made permanent within a period of 2 months. Later on, he was told that his case was under consideration of the Managing Director of the Respondent No. 1 and that he would be made permanent at any moment. It is further contended that in the meanwhile, the Acting Editor Shri Paren Jambhale started harassing him. Later on, Shri Bhau Joshi and Shri Paren Jambhale both started harassing him. In the month of August, 1992 he was asked to work more and his working hours were extended by 4 hours. He was also told to do the work of translation of 5 columns, else his services would be terminated. In the month of February, 1993, one Shri Nandkumar Teni occupied the post of Shri Paren Jambhale and he also started harassing him. It is further contended that he was not made permanent even after he put in service for one and half years. Then, Shri Bhau Joshi personally and through others demanded for Rs. 10,000 for his permanency. It is further alleged that in the first week of January, 1994 he made enquiry with Shri Bhau Joshi and he learnt from Shri Bhau Jashi that it was doubtful whether his services would be confirmed or not. Then, he directly met Shri Lakhotia, the Managing Director of the Respondent No. 1 and he learnt that Shri Bhau Joshi had never recommended him for confirmation/permanency. On 20th January 1994, Shri Bhau Joshi advised him to resign from service. On the same day, he received a letter dated 19th April 1994 and

informed him about expiry of his contract at the end of January, 1994. By the same letter, he was asked to collect his full and final amount and leave salary. It is further contended that after his termination, he learnt that Shri Bhau Joshi had not recommended him and hence he was required to leave the services of the Respondent No. 1. As per the Bachhawat Award and the Working journalists Act, there is no post of Apprentice Sub-editor. The agreement between him and the Respondent No. 2 is also illegal, in view of section 23 of the Indian Contract Act. He was required to leave the job in the daily "Samana". He was therefore forced to believe Shri Bhau Joshi. He could not even protest in writing due to fear of losing his job. He suffered a loss of Rs. 35,000 over a period of 2 years. He was not given the benefit like dearness allowance, house rent allowance, leave benefits etc. Thus, the action on the part of the Respondent No. 2 amounts to victimisation and unfair labour practices under item 1(a), (b) and (f) of Sch. IV of the MRTU & PULP Act and hence the complaint.

3. The Respondents filed their written Statement at Exh. C-2. They have denied all the allegations made against them by the Complainant employee. According to them, the Respondents appoint an apprentice Sub-editor/Reporter and imports training to them for a period of 2 years and there after absorb them if they found suitable on vacant post. In the month of January, 1992 the acting editor Shri D. B. Joshi of the Respondent No. 2 forwarded the Complainant employee's application and other 2 applications to the Executive Director of the Respondent No. 1 for apprentice sub-editor with his note/remark. On considering the said note/remark, the acting Editor forwarded the Complainant's application and other two applications to the Managing Director with his recommendations. The Respondent No. 1 found it necessary that the Complainant employee must undergo apprenticeship for a period of 2 years. An agreement prescribed by the Respondent No. 1 was then entered into on 1st February 1992 with the Complainant employee. The Complainant employee also offered his service to work as an apprentice/Sub-editor on monthly stipend of Rs. 1,500. As per the clause in the said agreement, it was required to deposit Rs. 500 as cash security, but the said condition came to be waived. Then formal letter dated 21st February 1992 was sent to the Complainant employee waiving the condition of cash security. It is further submitted that the work of the Complainant employee was not satisfactory. Therefore, the Complainant employee's services came to be terminated after training period *i.e.* with effect from 1st February 1994, *vide* letter dated 19th January 1994 and he was called upon to collect his stipend in full and final. The Complainant employee received the said letter. As per the terms in the said agreement, there was no obligation on the part of the Respondent No. 1 to offer employment to the Complainant employee. The certified standing orders clearly stipulate that an apprentice working journalist employed for the purpose of learning his trade for a period as required, but the training shall not exceed 2 years and will be appointed as apprentice without any obligation on the part of the establishment to employ him in the service after completion of his apprenticeship. The letter dated 19th January 1994 was also not necessary, but it came to be sent for intimation. Thus, the action of termination of service does not amount to any unfair labour practice, as alleged.

4. The learned trial Judge framed the Issues, recorded the evidence of the witnesses produced by both the parties and on considering the oral evidence as well as the documentary evidence, the trial Judge was pleased to dismiss the complaint by his judgement and order dated 29th April 1998.

5. Being aggrieved by the said judgement and final Order dated 29th April 1998, passed in Complaint (ULP) No. 35 of 1994 the Complainant employee has preferred the present revision application, on the grounds stated in his revision memo.

6. Heard the Complainant employee in person and the learned Advocate for the Respondents. On considering their arguments and the material on record, the following points arise for my determination and I have recorded my findings thereon for the reasons stated below :–

Points	*Findings*
(*i*) Whether the trial Judge has rightly decided the complaint and passed the final Order dated 29th April 1998 ?	Yes.
(*ii*) Whether it is required to interfere with the findings and final order dated 29th April 1998 passed in complaint (ULP) No. 35 of 1994 ?	No.
(*iii*) What Orders ?	As per order below.

Reasons

7. So far as supervisory and revisional power of this Court under section 44 of the MRTU & PULP Act is concerned, the learned Advocate for the Respondents has submitted that this Court has limited and restricted jurisdiction under Section 44, while deciding the revision. In support of his submission, he has relied on 2 cases *viz.* (1) Pest Control India Private Limited *V/s.* Its Workmen reported in *1994 I LLN 112 (Bom)* and (2) Gajanan Shamrao Thakerey *V/s.* MSRT Corporation reported in *2000 III CLR 99 Bom*. It is held in both these cases that the Industrial Court cannot act like as appellate authority and cannot reappreciate the entire evidence. Even if on reappreciating the evidence the Industrial Court comes to conclusion different than the conclusion than of Labour Court, it cannot disturb the findings of the Labour Court under supervisory jurisdiction, under section 44 unless any errors apparent on the face of the record are evident or order is perverse. From the above observations, it appears that the Industrial Court has extremely narrow and restricted jurisdiction under section 44. I, therefore, proceed to decide the present revision application in the light of the above observations of our Hon'ble High Court, in the above decision.

8. I must mention here that the Complainant employee has filed written arguments on law points at Exh. U-8, in the present revision application. By the said written argument, he has requested this Court to consider various provisions under various laws *viz.* MRTU & PULP Act; ID Act; Indian Contract Act; Working Journalists & Newspapers (Conditions of Service) & Misc. Provisions Act ; Industrial employment (Standing Orders) Act ; Indian Penal Code ; Contempt of Courts, etc. He has also requested this Court to consider the entire and complete the Acts/Awards *viz*. Bachhawat Award, Manisha Award, Employees Provident Fund & Misc. Provisions Act, Employees State Insurance Act, etc. But he could not convince this Court that all these Acts and provisions of law are really required to be considered. The present complaint is brought under item 1(a), (b) and (f) of Sch. IV of the MRTU & PULP Act. By the present complaint, he has challenged his termination on the facts given in the complaint. In support of his case, he has examined himself only. On the other hand, the Respondents have examined their witness *viz.* Shri Nandkumar Teni. The trial Judge has discussed their oral evidence as well as documentary evidence in detail. While discussing the evidence, he had also considered the legal submissions and discussed the same in his judgement wherever required. The Complainant employee could not show as to which provision was required to be considered and discussed by the trial Court. Therefore, it appears that the Complainant employee has vaguely stated and requested this Court for considering various provisions in the various Acts and for considering the entire and complete provisions in several Acts and also both the Awards. However, relevant provisions can be considered hereinafter, which are really required.

9. In Para 1 of the written arguments Exh. U-8, the Complainant had also submitted that the trial Judge has not consider his written argument Exh. U-37 and 32 rulings of various Courts relied on by him and submitted alongwith Exh. U-40. Lastly, he has requested this Court to consider the said written argument and 32 rulings of various Courts. On perusal of the judgement of the trial Judge, it appears that the trial Court has considered in his judgement the submission made by the Complainant's Advocate based on the written arguments. Likewise, the trial Judge has also considered the submission made by the learned Advocate for the Respondents. Besides the submissions from both the sides, the trial Judge has also discussed the decisions of the High Courts and Supreme Court, which are required to be discussed. The trial Judge has also given in his judgement the list of 32 decisions/rullings relied on by the Complainant employee. After giving the list of citations, the trial Judge has stated that he has gone through all the judgements, but they were not applicable to the facts of the present complaint. In the same manner, the trial Judge has given the list of rulings relied on by the Respondents and again, he has put the same remark that he had gone throught all the judgements. Since the trial Judge has considered some rulings/decisions in his judgement and discussed the points of arguments raised by both the learned Advocates, it cannot be said that the trial Judge has neglected to consider the written arguments and the rulings/decisions relied on by the Complainant/parties.

10. In this case, it is not disputed that the Complainant employee was working with the daily "Samana". Then he started working with the Respondents with effect from 6th January 1992 and he worked there for about 2 years. Then, his services came to be terminated by the Respondents with effect from 1st February 1994. So far as the appointment is concerned, it is the case of the Complainant employee that he was appointed as Sub-Editor by the Respondents with effect from 16th January 1992. Thereafter, his signatures were taken on an agreement in between 10th and 12th February 1992, without showing him the contents therein. By the said agreement, he was suppossed to work as Sub-Editor with the Respondents on stipend of Rs. 1,500 per month and to deposit Rs. 500 as cash security. Later on, he was exempted from depositing Rs. 5,00 as cash security. On the other hand, it is the case of the Respondents that the Respondents appoint full fledged sub-editors, who have requisites experience and ability. They also appoint apprentice sub-editor/Reporters as per their requirements and import training to them for a period of 2 years. In the month of January, 1992 Shri D. B. *alias* Bhau Joshi Acting Editor of the Respondent No. 2 forwarded the applications of 3 candidates, including the present Complainant, to the Executive Director of the Respondent No. 1 for apprentice sub-editors. These applications were forwarded alongwith the office note. On considering the office note, all the 3 candidates were appointed as the apprentice sub-editors. It is further case of the Respondents that the standard agreements were entered into with these apprentice sub-editors, including the Complainant employee, who offered their services as apprentice sub-editor for a period of 2 years on the conditions stipulated in the said agreement. The present Complainant employee also willingly entered into the said agreement dated 1st February 1992 with the Respondent No. 1 Company. So considering all these facts, the question arises as to whether the Complainant employee was appointed as apprentice sub-editor or sub-editor. Though the Complainant employee has came the case that he was not shown the contents in the said agreement at the time of obtaining his signatures on it, he has pleaded in his complaint that by the said agreement he was suppossed to work for a period of 2 years on stipend of Rs. 1,500 per month and to deposit Rs. 500 as cash security. Further, he is not denying his signatures on each of the agreement and under the agreement. He has also admitted that he did not make a complaint within 2 years about obtaining his signatures on the said agreement without disclosing him the contents in the said agreement. Even, he has not made any complaint to the Executive Director of the Respondent No. 1 that Shri Bhau Joshi had covered the contents in the said agreement while obtaining his signatures on it. Further, he has admitted in his evidence that he did not give in writing to the Respondents that he was forced to accept the appointment as apprentice sub-editor on stipend of Rs. 1,500 per month. So considering the evidence of the agreement and the oral evidence, admissions etc. the trial Judge has held that the Complainant employee has failed to prove his case with regard to his appointment.

11. It is further case of the Complainant employee that on 16th January 1992 Shri Bhau Joshi asked him to join the Respondent No. 2 as sub-editor. At that time, he was assured by Shri Bhau Joshi that he would be given appointment letter for the post of sub-editor at the earliest. But there is no evidence on record, except mere word of the Complainant, that he was asked to join as sub-editor and he joined as sub-editor on the assurance given by Shri Bhau Joshi. It is further case of the Complainant employee that the agents/loyalists of Shri Bhau Joshi and Shri Bhau Joshi himself demanded Rs. 10,000 for his permanency. On this point, there is again no evidence, except his mere work. In this connection, he has stated in his evidence that he did not make any written complaint to the Respondents or the union about the demand of Rs. 10,000, but he has written this fact for the first time in his complaint. Further, he has admitted that he has not filed affidavit/rejoinder to the affidavits filed by the loyalists, who have denied the allegation of demand of Rs. 10,000. He has further admitted that the appointment is made by the Executive Director of the Respondent No. 1. If it is so, the question of demanding Rs, 10,000 by Shri Bhau Joshi or his loyalists does not arise. The Complainant employee also could not show that Shri Bhau Joshi had confirmed any of the employees in the company by issuing letter of confirmation. The witness examined by the Respondents has also stated in his evidence that the Complainant employee never made a complaint to him against Shri Bhau Joshi for having demanded Rs. 10,000 for his permanency. The trial Judge has also discussed the evidence on this point in detail and disbelieved the case of the Complainant.

12. It is further case of the Complainant that Shri Bhau Joshi, then Acting Editor Paren Jambhale and then Shri Nandkumar Teni harassed him by different ways. He has given the particulars of the name in his complaint as well as in his evidence. However, he has admitted that he did not make any complaint in writing about his harassment/threatening by these 3 Officer. But he orally made complaint to the person *i.e.* the General Secretary of the union. The Complainant employee has not produced any witness on this point. Even he does not know as to whether the union had written any letter to the Respondents in respect of his complaint. From the above facts, it also shows that the Complainant employee has firstly brought the fact with regard to the harassment in his complaint. But there is no evidence, except his word. The trial Judge has also discussed the evidence of both the witnesses in detail on this point and on the point of appointment/allegation with regard to the demand of Rs. 10,000 etc.

13. The Complainant employee has stated at one place that he signed the agreement under grave economic compulsion as he was the sole bread earner of his family, consisting of his old mother aged about 67 years and who was totally sick and bed ridden, since September, 1989. But he has not produced an evidence to that effect. Thus, he has again failed to prove that he signed the said agreement under compulsion.

14. The learned Advocate for the Respondents has submitted that the Complainant has admitted his signatures on the agreement and also on each page of the agreement. However, he failed to prove that his signatures were obtained on the agreement without disclosing the contents therein. The Complainant employee has also failed to prove that he signed the said agreement under Compulsion. Therefore, the plea taken by the Complainant employee cannot be accepted. In this connection, he has relied on the case of Bihar State Electricity Board, Patna, *V/s.* M/s. Green Rubber Industries & Ors. reported in *1990(1) SCC 731.* Wherein. Their Lordships have held that it is settled law that a person who signs on document which contains contractual terms is normally bound by them, even though he has not read them and is ignorant of the precise legal effect. In this case the Respondents have come with the case that the agreement was in the prescribed form. Even if it is presumed that it was not in the prescribed form, the Complainant employee is bound by the said agreement in view of the above observations, as he has failed to prove the pleas taken by him.

15. The Respondents have come with the case that the performance and suitability of the Complainant employee did not meet the requirement and, therefore, his traineeship/ apprenticeship came to end with efflux of period for which he was appointed as an apprentice. So far as the performance and suitability of the present Complainant is concerned, the evidence of Shri Nandkumar Teni, examined by the Respondents, shows that on joining the Respondents, the Complainant employee started the work of translation of news from English into Marathi. But the quality of his translation work was very poor. He was lacking of newssense and, therefore, his output was very low. The reports signed by Shri Bhau Joshi also show the same. His behaviour was also not proper with his colleagues and seniors. His tendency was to avoid second and third shift. He was also lacking the speed of type setting. Thus, his working was not upto the mark. It appears from the cross examination of the Complainant employee that he has passed B. A. examination in the year 1988. After his graduation, he worked in M/s. Bhandare & Company as a Clerk for 2 years *i.e.* from 1st October 1988 to 31th December 1990. Then, he joined ' Samana ' from 1st January 1991 but he could not produce his appointment letter. On this point, he has stated that he was not the regular employee in 'Samana' and, therefore, he was not given any appointment letter. His cross examination further shows that he could not produce any evidence to show that he was getting salary from 'Samana' office. As regards his designation in Samana, he has stated that he was working as Sub-editor in 'Samana'. He could not produce any best evidence to show that he was really working on the said post, except the certificate dated 20th January 1992 Exh. U-31. In fact, the Complainant coemployee made application to the Respondents on 23th January 1992, but he failed to attach the said certificate, to his application. Secondly, he does not know as to whether the said certificate was issued by the Executive Editor Shri Subhash Desai in 'Samana' office. It further appears from his evidence that said certificate was issued by the Senior Accounts Officer, but the Complainant employee has not examined him, so, considering the evidence, it appears to be doubtful as to whether the Complainant employee was really working as Sub-editor in 'Samana' and he has experience of the Sub-editor.

16. From the above evidence, it appears that the Complainant employee was terminated after expiry of the period of his apprenticeship on the ground of his unsatisfactory performance. The trial Judge has discussed some case laws relied on by the Respondents. The first case is *Anthony Clinto Siva V/s. S. V. Nevaji & Others, reported in 1990 I LLR 191 (Bom),* Wherein, it is held by Their Lordship that it cannot be said that the employee is in the regular employment and his termination of service amounts to retrenchment within the meaning of Sec. 25-F of Industrial Disputes Act, where he is appointed as trainee officer, who has completed his training successfully and as such he can be appointed. The other case is *Prafulla Dattatraya Kore V/s. J. K. Chemicals Ltd. & Ors. reported in 1989(59) FLR-306*. Wherein, it is held by Their Lordships that the termination of service for unsatisfactory work does not amount to unfair labour practices. Further case is between *Agra Electric Supply Co. Ltd. and Alladin & Ors. reported in 169 II LLJ 540 Bom.* Wherein, it is held by Their Lordships that once the standing orders are certified and come into force, they bind both the employer and the employee.

17. In terms of the agreement between the Complainant employee and the Respondents, there was absolutely no obligation on the Respondents to offer employment to the Complainant employee after expiry of his training period. The certified standing orders also show that an apprentice working journalist employed for the purpose of learning his trade for a period as required by the trade, which shall not exceed 2 years and such apprentice shall be appointed without any obligation on the part of the establishment to employ him in the service after completion of apprenticeship. However, the evidence on record shows that it was the practice of the Respondents that if they find any experienced person, they take him on probation or a period of 6 months as a probationer sub-editor. If the person does not have any working journalist experience or knowledge of computer, then they consider him as a tranee sub-editor. They also appoint apprentice sub editors as per requirements and after completion of apprenticeship satisfactorily, they appoint him on probation. They also appoint sub-editor directly as a full fledged sub-editor. Considering all this fact, it appears that the present Complainant employee was appointed as apprentice sub-editor for a period of 2 years, as per the said agreement as well as the certified standing orders, and after expiry of the apprenticeship period, he came to be terminated from services of the Respondents. If it is so, the question of unfair labour practice does not arise.

18. The Complainant employee has submitted that the working journalists and other Newspapers employees (Conditions of Service) and Misc. Provisions Act and provisions, in Bachhawat Award do not envisage the appointment of apprentice in the newspapers establishment. The appointment of apprentice in the newspaper establishment is also legally repugnant to the Apprentice Act. On this point, the learned Advocate for the Respondents has submitted that the Complainant employee was appointed as apprentice sub-editor as per the certified standing orders applicable to the working journalists. Since the Complainant's performance was not satisfactory, he was terminated from service after expiry of the period of apprenticeship as per the provisions in the certified standing orders. Sec. 2(e) of the Apprenticeship Act applies only to the designated trade, which the Central Government, after consultation with the Central Apprenticeship Council, may by notification in the *official gazette* specified as a designated trade for the purpose of the said act. Sec. 4 (1) of the Apprenticeship Act prohibits engaging in apprentice to undergo apprenticeship training in designated trades, unless he has entered into a contract of apprenticeship with the employer. Sec. 6 of the said Act further provides for the period of apprenticeship and Sec. 8 of the act lays down the number of apprenticeship for a designated trade. However, the designation of the Sub-editor has not been stipulated as one of the designated trades under the said act and, therefore, the question of application of the said act to the apprentice sub editors does not arise at all. Even if it is presumed that the provisions of the Apprenticeship Act applies to the present case, the fact remains that the said agreement clearly shows that the Complainant employee was appointed as apprentice sub-editor. Only because the Respondents failed to do some act, as required under the Apprenticeship Act, the nature of the appointment of the Complainant employee would not be changed. The certified standing orders applicable to the Respondent company also allow the Respondents to appoint the apprentice sub-editor. Therefore, it appears substance in the submission made by the learned Advocate for the Respondents that the appointment of the present Complainant employee as apprentice sub-editor was made and the service of the Complainant employee was terminated as per the certified standing orders.

19. Form the above discussions, it appears that the trial Court has rightly recorded his findings on the issues and also rightly passed the final order. It is, therefore, not necessary to interfere with the said findings and the final order dated 29th April 1998 passed in Complaint (ULP) No. 35 of 1994. In the result, the points No. (1) and (2) are hereby decided accordingly.

20. With this, I proceed to pass the following order :—

Order

Revision Application (ULP) No. 74 of 1998 is hereby dismissed. No order as to the costs.

M. L. HARPALE,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated the 6th August 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 12th August 2002.

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IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI P. B. SAWANT, MEMBER

REVISION APPLICATION (ULP) No. 199 OF 2001.—The General Manager, The BEST Undertaking, BEST Bhavan, Mumbai 400 001—*Applicant—Versus*—Shri Mansajmani Tannival, Room No. 22, Plot No. 18, Parijat Co-op. Hsg. Society, Mumbai 400 067—*Opponent.* REVISION APPLICATION (ULP) No. 10 OF 2002.—Masajmani Tannival, Room No. 22, Plot No. 18, Parijat Co-op. Hsg. Society, Ganesh Nagar, Kandivali (W), Mumbai 400 067—*Applicant—Versus*—The General Manager, BEST Undertaking, BEST House, Mumbai—*Opponent.*

CORAM.— Shri. P. B. Sawant, Member.

Appearances.— Shri. S. A. Khanolkar, Advocate for workman;

Shri. T. Baig, Advocate for BEST Undertaking.

Judgment

1. Both these Revisions have arisen out of the judgment passed in complaint (ULP) No. 56 of 1999 dated 25th October 2001 on 12th Labour Court, Mumbai (Shri. Gajbhiye). Being aggrieved by the said order, the original Respondent General Manager, BEST Undertaking as Revision Application (ULP) No. 199 of 2001. Simultaneously the workman concerned being aggrieved with the order of the Court for taking him back in service as fresh candidate has preferred the Revision Application (ULP) No. 10 of 2002. Since both these Revisions have arisen under the said order and give same set of facts as being averred in the original complaint, it is decided to hear and decide both these Revisions by one common order.

2. One Shri. Mansajmani Tannival was in the employment of the BEST Undertaking as bus driver at Malvani Depot. Since 30th June 1992 His services were brought to an and on 19th January 1998. It is the contention that the Complainant has rendered unblemished past. He has been chargesheeted under Standing orders clause 20(*k*) and 20(*g*) for committing breach of rules and regulations and for knowingly giving false information regarding his personal information. He was kept under the enquiry. It is alleged that whatever service, he has produced at the time of his inceptions his service was from his school and it was correct. However, due to division of District, the postal authority could not trace out the school by its original address. The Complainant asserts that he never has given false information nor a false certificate. It is alleged that the Respondent has not considered his past record and has given extreme harsh punishment depriving him his family from the bread and butter. The principles of natural justice are violated and the dismissal from service is amounting to victimisation and in colorable exercise of employer's right. With all these averments, the Complainant has filed the present complaint and prayed for his reinstatement with continuity of service.

3. The Respondents have resisted the contention by its written statement contending *interalia* that the complaint is false and frivolous and the same is liable to be dismissed. It is pointed out that the dismissal is an outcome of a legal and proper domestic enquiry and no grievance has been left for the Complainant to egitate. It is contended that the enquiry cannot vitiate on any ground. The evidence in the enquiry has been properly valued and the findings of the Enquiry Officer are not perverse.

4. It is pointed out that as per rules and regulations, the school leaving certificate produced by the Complainant was sent to the school authorities for verification. There was no response from the school authority inspite of repeated efforts. The District Magistrate, Tamilnadu was asked to furnish particulars and genuineness in school leaving certificate and as per his report, the school issuing leaving certificate was not in existence in the District. Therefore, the chargesheet was issued and the Complainant was placed under domestic enquiry. After conducting the domestic enquiry, the Complainant was rightly dismissed from service as he was not fit to be continued. The Appeal which was preferred was heard and decided by A.T.S. The second Appeal was also rejected as there was no reason to interfere in the earlier order. Therefore, it is pointed out that all the fair opportunities were given to the Complainant. The enquiry was legal and proper. The fair opportunity was given to the Complainant, and therefore, there is no whisper on record regarding the unfair labour practice being followed by the Respondent. Therefore, it is prayed that the complaint be dismissed.

5. On these averments, the Trial Court has framed the relevant issues at Exh. O-3. Thereafter on the basis of the evidence, oral and documentary led before him has proceeded ahead in dealing each point as being raised and finally has come to the conclusion of giving relief to the extent of fresh appointment to the Complainant from the date of the order without any back wages or continuity of service.

6. Being aggrieved and dissatisfied, aggrieved employer has preferred Revision contending therein that the Trial Court has erred in appreciating the entire evidence and it is also contended that the Trial Court has not properly contended the verasity of the school leaving certificate. The assumptions of the Trial Court that the employee has obtained his recruitment under a false and bogus school leaving certificate as being criticised by the Revision Petitioner. As against this, the original Respondent in its revision has contended that giving a false certificate itself was fatal for the re-entry of the eployee concerned in the establishment. The conclusion of the Trial Court that the Respondent has followed unfair labour practice under item 1 (*a*) of Schedule IV is untenable and the Trial Court has erred in coming to such conclusion. The trial Court has erred in holding that employee can continue in service only on the count that he has a driving licence that too when the school leaving certificate produced by the employee was found to be bogus and false. It is alleged that the Trial Court has misguided himself by relying on the judgment and authorities submitted by the Complainant though the facts are totally different. It is pointed out that the Trial Court has shown unwarranted sympathy to the Complainant. The findings of the Trial Court, therefore, will be amounting to allowing a re-entry of the employee who has given a false and bogus certificate. Therefore, it is alleged that such finding is against the law, equity and good concious. The order suffers with error apparent on the face of record. The employee like Complainant does not attract any sympathy who has secured the employment on the basis of the bogus certificate. Therefore, on this and other grounds, it is prayed that the revision be allowed. The order passed by the Trial Court be set aside and the entire complaint be dismissed.

7. The workman has also filed his revision on the grounds referred above. Besides has submitted that this Court has enough powers under Section 44 of the MRTU & PULP Act to consider the legal as well as factual aspect of the case and to set aside the order of the Trial Court by granting reinstatement with full back wages and continuity of service. The original Complainant submits that the Respondent has wrongly interpreted the word approved school and thereby come to the conclusion that there is no school at all with the same name. It is pointed out that the school after the division of the District transferred to another District Kanyakumari and, therefore, the District Authority of Kanyakumari cannot ascertain the facts of existence of school. It is pointed out that the said school is recognised as D. A. Middle School at Terunevalli. It is pointed out that when the Labour Court has come to the conclusion that there is unfair labour practice under items 1(*a*) and (*b*) of Schedule IV of the Act. It was obligatory on the Labour Court to direct reinstatement with continuity of service and with full back wages. Passing such order, the Trial Court has practically lost the sight of the legal proposition. Therefore, it is prayer that the order be set aside and the Complainant be given reinstatement with full back wages and continuity of service.

8. The Respondents in both these Revisions are themselves have filed respective petition. Therefore, they have supported their own contention in the petition without supporting the order passed by the Trial Court.

9. On the rival contentions of the parties, following points arise for my determination :–

Points	*Findings*
(*i*) Whether the order passed by the Trial Court is legal and proper ?	Negative.
(*ii*) Whether any interference is required in the order passed by the Trial Court ?	The matter is to be remanded back.
(*iii*) If yes, to what extent ?	As per final Order.
(*iv*) What order ?	As per final Order.

Reasons

10. *Point No. 1.*—The set of facts as being narrated before the Court indicates the entire scenerio. The cause of action has arisen on account of the verification of the school leave certificate. To the extent of sending the certificate to the concerned school authorities for varification, there should not be any grievance from either side because it is established as a usual practice of the Respondent establishment. The real controversy has started when the Respondent undertaking was not able to get any response from the school authority which had issued the certificate in the name of the Complainant. The appropriation of the contents in the certificate were remained unverified because of no response from the concerned school.

11. In this situation, the endorsement of the postal authorities on the envelope indicates that the Respondent has rightly raised suspicion about the existence of school authorities itself. The suspicion has been supported because the District Magistrate of the concerned District has certified that there is no approved school such name. In short, there was Material available with the Respondent to say that the certificate is possibly bogus and therefore, the very entry of the employee in the department on the bogus certificate needs to be quashed.

12. On these factual aspects, the Trial Court has considered the entire records referring to the order of the first Appellate Authority as well as second Appellate Authority. The Trial Court has also considered the conclusions of these Appellate Authorities as well as punishing authority and has come to the conclusion. The question now before me is of to construe the legality and propriety of the order passed by the Trial Court. Such legality will have to be tested because the Trial Court has at one sight declared that the Respondent has followed unfair labour practice but on the second phase has not granted consequential relief of reinstatement, back wages and continuity of service.

13. The findings of the Trial Court are reflected in the judgment para 14 and para 16. The substance of the conclusion drawn by the Trial Court is that of a minimum qualification for the post of a bus driver was 7th standard. But the Respondent undertaking has not produced any rule or document to show for such required qualification. It also appears from the observation of the Trial Court on page 13 that the certificate issued is by such a school which is not a recognised school. The Trial Court is of the view that merely because the Complainant does not know whether the school issuing certificate is a recognised or not, will not vitiate the qualification of the Complainant employee. This has laid the Trial Court to observe that the employee who has rendered unblemished past for about 6 years cannot be punished by dismissing him from service. Such punishment is shockingly disproportionate. The Trial Court has also observed that the termination of employee will be amounting to economic death. By going one step ahead, the Trial Court has observed on page No. 14 para 15 that :–

> "The act of the Complainant workman does not affect the service of the Respondent undertaking in any manner and, therefore, the Complainant workman requires to be reinstated".

14. Considering the observation of the Trial Court, it has to be borne in mind that a delegant employee is supposed to disclose all the relevant information required by his employer for the employment. The information includes the information regarding age, caste, physical condition as well as educational qualification. If any suppression of fact is made, it always cause a vital blow on the entire establishment. This word connotes with the discipline of the establishment. The new entrance in the service if continues in service on the basis of a false information, the other would also dare to committ the same, and then all those employees, therefore, will stand on unsustainable footing of incorrect information or bogus certificate. The beneficial interest of the weaker section is at one side and maintaining the industrial peace or discipline interse is at other side. Therefore, while keeping the interest of the weaker section in mind, it cannot happen that the discipline in the establishment should be disturbed or there should be unrest amongst the workers on the same count. The Trial Court has not looked into this aspect and has come to the conclusion that the dismissal is causing economic death. Admittedly the dismissal is always painful, but when it is supported with cogent reasoning, then normally, it should not be interfered.

15. Considering the proposition, the averments on record indicate that the BEST undertaking has given ample opportunities to the employee concerned for producing the information regarding the genuineness of the certificate. The Complainant in this situation has explained that the school situated in Kanyakumari District and now after the division of district, it has gone to some other district. The correspondence on record made by the BEST undertaking with the school authority has been returned back with various endorsements. It reflects that the addressee could not be traced and therefore no person could be contacted. Therefore, ultimately, resort of contacting the District Magistrate was resorted and the District Magistrate, Kanyakumari by his letter dated 6th March 1997 has informed that on varification of the T. C. S. issued to the Complainant, it is confirmed that there is no such approved school in this district that means in Kanyakumari District, there is no such school. The transposition of the school, therefore, has come forward because the Complainant has put up a theory of transposing the said school in other District. Admittedly, the BEST Undertaking has not made any endeavour for sending the said certificate to that District Magistrate. On perusal of the enquiry proceeding, it is transpired that it was a oral submission of the delinquent for sending the correspondence to the another District. Simultaneously, in the submission, the defence representative has also mentioned that the undertaking should have enquired in the another District. The Enquiry Officer-Senior Traffic Officer of Malvani Depot has mentioned in his finding that the defence representative has claimed for verifying about the variasity of the certificate in the other District of Terunevalli. But he has negatived the demand by saying that the delinquent driver has not mentioned in which District the said school has gone. It is, therefore, clear that to sort out all the probabilities, the BEST Undertaking has contacted for all sorts of information and tried to get the requisite information. Simultaneously, it is transpired that the employee concerned has not made any efforts in visiting the place where the school is situated and bring the relevant record before the Enquiry Officer or before the Court. He has left the matter on the BEST Undertaking by simply saying that he was taking education in the same school named in the certificate. In view of this position, there is a slight lacuna while investigating the matter by the BEST Undertaking. This fact has been reckoned by the Enquiry Officer also it appears that Trail Court has not made any efforts to resort to the enquiry proceeding or the findings of the Enquiry Officer but has come to the conclusion by himself saying that the employee concerned will face economic death if dismissal would be allowed to be continued.

16. In pursuance with the above discussion, the question will be raised as to whether the above referred lacuna can amount to as fatal to the entire case. It appears that repeated submissions of the Complainant that the school situated at Kailasapuram has been shifted to another District Tamilnadu. The rearrangement of Kanyakumari District could not be brought ahead nor the Complainant has been given an opportunity to call revenue record about such rearrangement of the District. It has been transpired from the Appeal proceeding preferred by the employee concerned against his dismissal that the Appellate Authority has referred to one certificate of T.D.T.A. Middle School of Tamilnadu. By the said letter-cum-certificate, the Appellate Authority has reckoned that the employee was the student of the school previously known as St. Thomas High School, Tal. Kailasapuram and due to administrative exigencies, the said school merged into T.D.T.A. Middle School and has certified that the said certificate relied on by the Complainant is correct. The Appellate Authority has not considered the said letter because the document was produced at a late stage *i.e.* at the appellate stage which was not appropriate and therefore, found it better for not to interfere and therefore second appeal was dismissed.

17. Considering the views of the Appellate Authority below it is clear that both of them have referred to the certificate issued by the Head Master T.D.T.A. Middle School. It is pertinent to note that the said certificate is not on record of the Court. Besides, it does not appear to have produced by the Respondent in the Court along with the enquiry proceeding. The observation of the Trial Court therefore, has no concern with such certificate. Besides the Trial Court has no opportunity to refer to the said certificate and comment upon it is also amount to a lacuna remained to have been resolved to.

18. In the given circumstances, the question of harshness of punishment, victimisation etc., referring to the allegations in the complaint are concerned, cannot be resolved unless the anomaly has arisen for want of opportunity to explain the certificate issued by the head master, Terunavalli. Therefore, it will be just to remand the matter and to grant an opportunity to the Complainant to adduce the necessary certificate from the school authorities about the bifurcation of Districts as well as merging St. Thomas School etc., the Respondent also shall produce the certificate of T.D.T.A. Middle High School which was referred to by both the Appellate Authorities before the Trial Court so that the Trial Court can properly consider the variasity of the certificate and also can consider the certificate of the District Magistrate of the District Terunevalli if produced on record. The approach of the Trial Court in granting the employment even as a fresh candidate is also not proper in the sense that the employee concerned will have to rely again on the same School Leaving Certificate for which he has been chargesheeted and dismissed subsequently. Therefore, by allowing the employee by the order of the Lower Court, the Lower Court has condoned the variasity of the certificate and thereby committed error apparent. For this reason also, the order deserves to be interfered with. In the above situation, the learned Advocate Shri. Khanolkar has relied on several observations of Hon'ble our High Court besides the Hon'ble Apex Court pertaining to the point of material facts at the time of entry in the service and by submitting incorrect documents but the citations cannot be considered at this stage unless and until the matter has been reconsidered properly and thoroughly by the Trial Court. In the result, both the Revisions have to be disposed of as the matter deserves to be remanded back. Therefore the points raised for consideration shall stand redundant. Hence, I pass the following order :—

Order

(*i*) The Revision Application (ULP) No. 199 of 2001 and Revision Application (ULP) No. 10 of 2002 are disposed of.

(*ii*) The Complaint (ULP) No. 56 of 1999 is remanded back to the Trial Court.

(*iii*) After receipt of the Record and Proceedings from this Court, the trial Court shall give an opportunity to the Complainant for explaining the birfurcation of Districts and merging of the school of by allowing the Complainant to adduce the relevant documentary as well as oral evidence if required within three months and then shall decide the case afresh referring to the additional evidence recorded by him.

(*iv*) Both the parties are directed to appear before the Trial Court on 5th August 2002.

(*v*) The Trial Court shall decide the complaint afresh as early as possible but not later that 31st December 2002.

Parties are left to their own costs.

P. B. SAWANT,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated the 18th July 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 14th August 2002.

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INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI V. P. ROTHE, MEMBER

APPLICATION (IC-TU) No. 6 OF 2001—(1) Shri Vijay Chavan, Managalgeet Co-op. Hsg. Soc. Ltd., EC 52, A 102, Evershine City, Vasai (E), Thane 401 205. (2) Shri Shekhar S. Karkera, A/14, Rajlaxmi Co-op. Hsg. Soc. Ltd., Eksar Road, Borivli (W.) Mumbai 400 092. (3) Shri Mohan Bangera, Satyana Bharathi Society, B/3-8, Near Chincholi Gate, Malad (E.), Mumbai 400 097—*Applicants—V/s*—(1) Bank of India Staff Union, Bank of India Building, 70/80, M. G. Road, Mumbai 400 001. (2) Shri J. J. Mahadeshwar, President, Bank of India Staff Union, Mumbai 400 001.(3) Shri S. G. Khanolkar, General Secretary, Bank of India Staff Union, Mumbai 400 001. (4) Shri Nandkumar Chavan, Secretary, Bank of India Staff Union, Mumbai 400 001 (5) Shri Sunil Pradhan, Jt. Treasurer, Bank of India Staff Union, Mumbai 400 001. (6) Shri Vikas Varma, Jt. Treasurer, Bank of India Staff Union, Mumbai 400 001—*Opponents.*

In the matter of dispute under Sec. *28 (1-A) (i) of the Trade Unions Act, 1926.*

CORAM.— Shri V. P. Rothe, Member.

Apperances.— Shri V. P. Vaidya, Learned Advocate alongwith

Shri B. D. Birajdar, Learned Advocate for the Applicants.

Shri A. P. Kulkarni, Learned Advocate for the Opponents.

Judgement

(Dated 31st August 2002)

1. Applicants have filed this application on the basis of the consent certificate given by the Dy. Registrar of Trade Unions, Mumbai, regarding the dispute U/s. 28 (1-A) (i) of the Trade Unions Act, 1926.

2. Applicant, Shri Vijay Chavan and 2 others and the Opponent Nos. 2 to 6 are the employees of Bank of India. All of them are the members and Office-bearers of Bank of India Staff Union *i. e.* the Opponent No. 1. This Union is registered under the Trade Unions Act, 1926. Opponent No. 1 Union has got its own Constitution, Rules and Regulations. This Constitution was amended on 23rd October 1998.

3. Applicants have contended that the General Secretary or the Treasurer of the Opponent No. 1 Union may retain the petty cash of Rs. 3000 as per the amended clause 19 of the Constitution. If the sum of money is above this limit, that shall be deposited in the Bank in the name of the Union. Oppnents ought to have held the general meetings of the Opponent No. 1 Union once in every year for the purpose of adoption of accounts. The General meeting ought to have been held before 31st of March, of every year. So also the Managing Committee meeting, ought to have been held once in 3 months and that of the General Council once in 6 months as per Clauses 9 to 11 of the Constitution.

4. It is necessary on the part of the Opponent to maintain the proper Books of Accounts and keep it open for the inspection of any member of the Union. The Opponent No. 1 held the elections on 8th January 1999. The Office-bearers of the Opponent No. 1 Union were elected in this election. The Opponent No. 1 failed to hold such elections after the period of 2 years and the Managing Committee of the Opponent No. 1 continued till 7th January 1999. The Statement of Accounts and Returns for the year 1992 to 1995 not sub-mitted by the Opponent to the Registrar of Trade Unions, as a consequence of which registration of the Opponent No. 1 Union was cancelled by the Registrar of Trade Unions. These news was figured in Daily 'Loksatta' dated 19th June 1997. However, the Opponents did not bring this fact to the notice of its members and no meeting was convened on such a issue.

5. In the Daily 'Loksatta' dtd. 27th June 1997 another news figured that certain amount was illegally withdrawn by the Opponents from the Account of the Opponent No. 1 and the said amount was partly re-deposited in the Bank. In the intermittent period, the Opponent No. 1 Union had challenged the order of Registrar of Trade Unions pertaining to cancellation of its registration. As per the order passed in Writ Petition No. 109/98, the Registrar of the Trade Unions was directed to restore the registration of the Opponent No. 1 Union on the condition that the Opponent No. 1 would file the returns upto 31st December 1996 within 15 days and the returns upto 31st December 1997 would be filed on 31st April 1998.

6. It is the case of the Applicants that having learnt from the newspapers regarding the cancellation of the registration and the fraud committed by the Opponents, the Applicants have orally demanded the inspection of the Books of Accounts. They wrote the letters dated 23rd January 2001 and 16th February 2001 in this regard. These letters were sent to the General Secretary *i. e.* Opponent No. 3 Despite of that, the Opponents have refused to give any inspection of the Books of Accounts to the Applicants. Therefore, they issued a letter dated 12th March 2001 to the Registrar of Trade Unions pointing out their grievances to that Authority. The Registrar of Trade Unions had issued a notice to the Opponent No. 3 *i. e.* General Secretary of the Opponent No. 1 Union and his explanation was called regarding the irregularities committed in respect of Opponent No. 1 Union. The Opponents did not submit any explanation to the Registrar of Trade Unions. They have convened the meetings of the members of the Managing Committee on 16th April 2001. As per the agenda of this meeting, the Statement of Accounts for the year ended on 31st December 1998, 31st December 1999, 31st December 2000, were to be adopted. The Opponents have also convened the A. G. M. of the Union on 18th April 2001 for transacting the business of adopting the Statement of Accounts for the years ended on 31st December 1998, 31st December 1999, 31st December 2000. The Applicants have submitted that the Opponents have no right to do so. Unless the Managing Committee approves the agenda, the general meeting ought not to have been called. The General Secretary of the Opponent No. 1 Union *i. e.* Opponent No. 3. sought to convene the meeting of the office-bearers on 12th April 2001 which was not in the prescribed manner. The agenda of this meeting was not informed to the members. During this meeting, the Opponent No. 3 was requested not to continue the meeting until the books of accounts are given for inspection. The Applicants have requested for adjourning this meeting. The Applicants have requested to the Registrar of the Trade Unions for issuing the true copies of Statement of Accounts submitted by the Opponent No. 1 Union for the year 31st Decemeber 1998 to 31st December 2000. It is alleged by the Applicants that there were lot of manipulations and irregularities in the Statement of accounts and Applicants feared that the records of the Opponent No. 1 were maintained incorrectly. The Statement of accounts and the Returns filed by the Opponent with the Registrar of Trade Unions not found reflecting the true and correct account. In order to verify the fact, the Applicants have issued the notice dated 16th June 2000 to the Auditor of the Opponent No. 1 Union pertaining to the audited Statement of Accounts for the year 1998 to 2000. This notice was not replied by the Auditor concerned. The Registrar of Trade Unions granted the consent in Form 'K' for raising the dispute as prescribed in sub-section (*1*) of Sec. 28 (1-A) pertaining to the Books of accounts of the Opponent No. 1 Union.

7. Applicants have contended that the Opponent No. 2 to 6 could not have functioned as Office-bearers as they automatically ceased to be the Office-bearers of the Opponent No. 1 Union. They ought not to have operated the Bank Account of the Opponent No. 1. They had no right to receive the money or to handle the money on behalf of the Opponent No. 1 Union. They have misused, mis-utilised and misappropriated the funds of the Opponent No. 1 for making the personal gains. They failed to discharge their obligations towards the members of the Opponent No. 1 Union. Thus they committed breach of trust. They were duty-bound to hold the meetings of the Managing Committee atleast once in 3 months. The Opponents have no right to submit any Statement of Accounts unless it is approved by the General Body. The Opponents have sought to get the approval of the Statement of Accounts by the General Body only on 18th April 2001. They ought to have got approved this Statement by General Body on or before 31st of March every year. The Statement of Accounts for the years 1998, 1999 and 2000 sought to be approved by the General Body and circulated to the members is totally different that what has been submitted to the Registrar of Trade Unions as the Statement of Accounts for those years. These statements were not found signed by the Auditor M/s. S. K. Mohile. The Statement of accounts submitted by the Opponents to the Registrar of Trade Unions and circulated to the members are collectively filed at Exh. 'P' and 'Q' by the Applicants. It was obligatory on the part of the Opponents to convene the meeting on behalf of the Office-bearers to confirm the minutes of the previous Annual General meeting. During the A. G. M. hled on 18th April 2001, the Opponent No. 3 who is the General Secretary of the Union failed to confirm the minutes of the previous A. G. M. Only the Accounts of the years 1998, 1999 and 2000 were adopted in the said meeting. On protest by the Applicants for this irregularity, the Opponent did not clarify the position. The Opponent No. 3 misrepresented the facts and misguided the general body without bringing to their notice the proper Statement of Accounts and got these Statement of Accounts approved. Thus the Statement circulated to the members of the Opponent No. 1 Union and the Statement of Accounts submitted to the Registrar of Trade Unions are illegal and bad-in-law. To the disadvantage of the mebers, the Opponents have committed the breach of trust. They have misused and misappropriated the funds against the interest of the members of the Opponent No. 1 Union and thereby violated the provisions of the Trade Unions Act. Hence, it is expedient to restrain the Opponents from functioning as Office-bearers of the Opponent No. 1 Union and from operating the Bank Account of the Opponent No. 1 Union. The Applicants have prayed that it be declared that the Opponent Nos. 2 to 6 have misused their powers, property of the Opponent No. 1 Union and manipulated its Books of Accounts. Hence, they be restrained from funcitoning as Office-bearers of Opponent No. 1 Union and operating the Current A/c. No. 10737 of the Opponent No. 1 Union. They be disqualified from contesting the elections of Opponent No. 1 Union or any other relief may be granted as per the prayer-clause of the Application.

8. In the Written Statement at Exh. UA-7, the Opponent No. 1 to 6 have resisted the claim of the Applicants. They have raised the preliminary objections on the ground that the averments and allegations in the Application do not disclose any cause of action, much less, the dispute contemplated U/s. 28 (1-A) of the Trade Unions Act. The averments in the Application are beyond the scope of the consent certificate issued in favour of the Opponents by the Registrar of Trade Unions. The Application itself is a product of conjectures, surmises and suspicion. It lacks any material facts and vague in nature. The allegation of misappropriation of fund, fraud are patently false and cannot be enquired into in this type of litigation. All the Applicants are the Office-bearers of the Opponent No. 1 Union. They participated in the meetings and the deliberations and never raised any objections in the said meetings.

9. The applicants have filed this Application malaciously, and thereby spoiled the democratic functions of the Opponent No. 1 Union. It is a Registered Union, affiliated to the Federation of the Bank of India Staff Union. It is answerable to both the Federation as well as All India Federaration i.e. it is also affiliated to the Maharashtra State Bank Employees Federation which is affiliated to All India Bank Association representing all the banks. The Opponent No. 1 Union is paying the affiliation fees to both these Fedrations.

10. It is admitted by the Opponent No. 1 Union that it has to adopt the Account in the General Meeting, which is required to be held on 31st of march every year and the General Secretary and the Treasurer of it may retain cash upto Rs. 3,000 as petty cash amount. It is also admitted that they deposited the money received from the members in the Bank and Account shall be operated by such person or persons as the Menaging Committee may appoint from time to time. The Opponents are required to hold the General Meeting of the Union once in 3 years and required to maintain proper books of accounts which are kept open for inspection of any member. The amendment of the Constitution was carried out on 23rd October 1998. Hence, there was no question of holding any election after 2 years. The election of the officer bearers and the Managing Committee members were held on 7th January 1999. The Opponent Nos. 2, 3 and 4 were elected in the election of office-bearers and Managing Committee held on 7th January 1999. The registration of the Opponent No. 1 Union was cancelled for not submitting the returns for the year 1993. It was cancelled by the Registrar of Trade Unions on 2nd May 1995. It came to be restored in the year 1998. The Opponents have always given the inspection of the Books of Accounts and other records. The so-called letter issued by the Applicant on 12th March 2001 is based on falsehood and its contents are denied by the Opponents. The Opponents deny that have shown any negative attitude, as alleged by the Applicants. The present Applicaton came to be filed by the Applicnats just to harass the Opponents and to cripple down the smooth functioning of the Opponent No. 1 Union. The inspection of Books of Accounts and relevant papers were never refused. The General Body meeting dtd. 18th April 2001 was held perfectly in tune with the provisions of the Constitution of the Opponent No. 1 Union and prior to the general meeting, the Managing Committee meeting was held on 16th April 2001. All the 3 Applicants were present and participated in the said meeting. They have signed the Attendance Register. The functioning of the Opponent No. 1 Union always been in tune with the democratic traditions. The entries in various Registers, Minutes Book and Accounts Books filed by the Opponents clearly show their bonafides. Thus the Applicants had occasion to participate in the respective meetings held on 12th April 2001, 16th April 2001 and 18th April 2001. None of the Applicants had raised any objection in these meetings. Thus while seeking the consent certificate, the Applicants must have thought with ulterior motive and vengeance against the Opponents. The Applicants are coming with the cock and bull story of not giving the inspection of Books of Accounts. It is specifically denied by the Opponents that they have committed any act of misappropriation or fraud. The present Application is nothing but an attempt to file the false litigation. The letters addressed by the Applicants to the Registrar of Trade Unions are based on falese information. The Applicants had deliberately and intentionally suppressed the material facts. On this ground alsone this Application can be dismissed with exemplary cost. It is admitted by the Applicants themselves that they verified the Accounts and Returns submitted by the Opponents. Despite of that they have not stated the irregularities in it. Thus the allegations about the irregularities in the Accounts are vague and false. It is denied by the Opponents that there is any irregularity in the Accounts for the year 1998, 1999 and 2000.

11. Opponents have denied that any bogus, false or baseless records are prepared by them. The entire Application is itself based on bogus and baseless grounds. The Auditor of the Opponent No. 1 Union has signed the annual returns of the Union and these returns are filed with the present Application. It contains the declaration of the Auditor for the respective years. It is denied that the Statement of Accounts circulated amongst the members and the Returns filed with the Registrar of Trade Unions for the yeras 1998, 1999 were totally different and they did not tally with each other. The Accounts for the year ended 31st December 1998 were submitted to the Office of the Registrar of Trade Unions on 1st July 1999 In the General Fund Account, figures shown as expenses on the right-hand side were put under incorrect head of Accounts. This was merely an accounting mistake and there was no change in the total amount. Thus, the returns filed by the Opponents with the Registrar of Trade Union and

circulated to its members are not different. The Applicants have falsely alleged against the Auditor of the Union and also falsely alleged that the Statement of Accounts before the Registrar of Trade Unions are false, manipulated and bogus.

12. On conducting the *ex-parte* enquiry, the Registrar of Trade Unions had issued the consent certificate in favour of the Applicants. Opportunity at the time of final hearing was not at all given to the Opponents. The consent certificate speaks of about the dispute relating to the property including the Account Books. The prayer clause of this Application is totally different and beyond the scope of the subject matter of the consent certificate. The Opponents have maintained that they never misused the powers and the funds of the Union, that too with intention to gain wrongfully for them. The affairs of the Union have been informed from time to time to all its members. All the meetings were held as per the provisions of the Constitution. The Statement of Accounts are required to be submitted to the Registrar of Trade Unions on or before the 31st of April, every year. The Opponents have furnished the audited Statement of Accounts and Annual Returns to the Registrar of the Trade Unions and the copies of the same are enclosed by the Applicants themselves with the present Application. As per the suggestion and advice of the Auditor of the Union, the Account was reconstructed as same of the heads of the Accounts were mixed up and hence the Opponents have submitted the said Accounts and submitted the same in the Managing Committee meeting held on 16th April, 2001. It was approved by the Managing Committee. All these 3 Applicants were present in the Managing Committee meeting. They have not raised any objection. The other members of the Managing Committee have not raised any objection. There is a provision in the Constitution of the Union for approval of the Accounts by the General Body and the same has been done on 18th April 2001 in the convened General Body meeting. The Applicants were the part of the General Body. They have signed the Attendance Register and participated in the said meeting. Thus the Applicants never ventiliated any grievance or raised any objection in the meetings dtd. 12th April 2001, 16th April 2001 and 18th April 2001. The Applicants were fully convinced about the Accounts and other related aspects. Mere irregularilties don't give any cause of action for filing these proceedings u/s. 28 (1-A) of the Trade Unions Act, 1926. The Opponents have maintained that they never acted in a manner prejudicial to the interest of the Opponent No. 1 Union. They need not be restrained from functioning as office-bearers of the Opponent No. 1 Union. The Application is totally false, frivolous and vexatious. All the 4000 members of the Opponent No. 1 Union are having faith in the Opponent No. 1 Union. These 3 Applicants are the disgruntled elements and disturbing the functioning of the Union. They have sought the consent certificate on false grounds and field this Application mischieviously on imaginary grounds, and the same be dismissed with cost. The Applicants be asked to strict proof of each of their allegations.

13. On the pleadings between the parties, the issues have been framed by me at Exh. O-1 on 2nd March 2002. The issues are reproduced hereunder and I recorded my findings on the issues for the reasons to follow :—

Issues—

(*I*) Do the Applicants prove that the Opponent Nos. 2 to 6 have manipulated the Books of Accounts of the Opponent No. 1 Union ?

(*II*) Do the Applicants prove that the Statement of Accounts and Returns filed with Registrar by Opponents are false, manipulated and bogus ?

(*III*) Do the Applicants prove that the Opponents have misappropriates the public money or committed fraud, in respect of it ?

(*IV*) Do the Applicants prove that the Opponent Nos. 2 to 6 have committed the breach of trust and they acted in a prejudicial manner, to the interest of Opponent No. 1 ?

(*V*) Whether the Opponent Nos. 2 to 6 can be restrained from operating the accounts of Opponent No. 1 Union in the Bank ?

(*VI*) Do the Applicant prove the irregularities committed by the opponents, in calling the meetings and maintaining the Accounts of the Union ?

(*VII*) Whether the Opponents prove that the Application is frivolous and vexatious and the same is field to harass the Opponents ?

(*VIII*) What order and relief ?

Findings :—

Issue No. I.— No.

Issue No. II.— No.

Issue No. III.— No.

Issue No. IV.— No.

Issue No. V.— No.

Issue No. VI.— No.

Issue No. VII.— No.

Issue No. VIII.— As per final order.

Reasons

14. *Issue Nos. I to VI.*—The Applicants have come before this Court with a specific case that the Opponent Nos. 2 to 6 have misused the property of the Opponent No. 1 Union Aplicants have further stated that the Opponent Nos. 2 to 6 have manipulated the Books of Accounts. In para 11 of the Application at Exh. U-1 it is specifically mentioned that the Applicants *vide* their letters dtd. 27th January 2001, 16th February 2001 have demanded the inspection of the Accounts Books of the Opponent No. 1 Union and the Opponents have refused to give the inspection.

15. On 12th March 2001 the Applicants have approached to the Registrar of Trade Unions and made out a grievance that the meetings of the Opponent No. 1 Union have not been held in time, the account books were not made available to them for inspection and other fradulent withdrawal of funds. In reply to the above allegations, the Opponents have convened the meeting of the Managing Committee dtd. 16th April 2001 and got the approval of the Managing Committee.

16. While considering the issues involved in this case and the evidence adduced before me, I find that the Issue No. I is pertaining to the manipulation of the Books of Accounts by the Opponent No. 2 to 6. To manipulate means to turn to one's purpose or advantage. The burden of proving this issue is on the Applicants. Which part of the Account Books is manipulated by the Opponent No. 2 to 6 for their own purpose must be proved by the Applicants. I have minutely gone though the evidence of the Applicant Shri Vijay Chavan at Exh. UW-1 In para No. 12 of his examination-in-chief the witness has stated that he got the copies of annual returns submitted by the Opponents in the Registrar's Office for the year 1998 to 2000. These copies were received by him in the month of May, 2001. On tallying the entries of the figures in the circulated Statement of Accounts and the Returns, he came to the conclusion that these entries are bogus and incorrect. He had borught this fact to the notice of the Registrar as per the letter dtd. 15th May 2001. On pointing out by him to the Registrar the particulars of the bogus entry of the statement of accounts by the letter dtd. 31st May 2001 as per Annex. 'Q' to the applicantion, the differences of the same are given by him in a tabular form, As per this tabular form at Annex. 'Q' to the main application, it was found Opening Balance of Rs. 10, 87, 661, 29 shown in the annual returns filed for the year 1997 in the Office of the Registrar of Trade Unions. In the Circulated Statement of Accounts given to the members, this amount is given as Rs. 10, 77, 664. 29. The subscription received shown in the Return is of Rs. 2, 95, 897.50 and in the Statement of accounts this amount is shown as Rs. 2, 90, 992/-. The interest on Fixed Deposit is of Rs. 4, 746 shown in the Return and in the Statement of Accounts, it is shown as Rs. 4, 905. The other technical objections raised as per the Anne 'Q' are that there is no signature of General Secretary on the Statement of Accounts. Large amount of cash is withdrawn of the deposits are made without the permission of the Managing Committee and it is also

observed in Annex 'Q' that all the irregularities and mismanagement done by the General Secretary Shri Khanolkar and this came to the notice of Shri Chavan during the inspection done by him in the Office of the Registrar. Thus Shri Khanolkar has misguided the members by not circulating it to the members. Similar types of defects Pointed out in the Returns for the year 1998 and Statement of Accounts for the year 1998 and the Returns of 2000 and the Statement of Accounts for 2000. Exh. 32 is the consent certificate issued by the Registrar of Trade Unions. In para No. 19 of his examination-in-chief, the witness has stated that in conclusion my observations are that the entries of Statement of Accounts and the Returns are bogus and manipulated. Vouchers are prepared without supporting bills and documents. The writing on vouchers and signatures thereon are manipulated. These vouchers are filed under the list Exh. U-36. In his cross-examination the witness has admitted that he cannot give the tentative figure of the misappropriated amount. It is further admitted that specifically it is not mentioned in Exh. U-1 that the Opponent No. 1 to 6 have misappropriated or misued the particular amount. It is specifically admitted by Shri Chavan that he had not made specific allegations against the Opponent Nos. 2 to 6.

17. As per Regulation 17 of the Bombay Trade Unions Act, Rule 1927, Annual Returns are required to be submitted to the Registrar by 30th day of April in each year and it shall be in Form 'T'. It is within the power of the Registrar of Trade Unions to check the correctness of the General Statement furnished to him by the Union and the Registrar may ask to produce such documents or furnish such information for purpose of verifying the truth in the matter or he may authorise any person to make investigation as he thinks necessary. As per Regulation 18, the annual audit of the Accounts of the Trade Union can be carried out by the Auditor. In the present case, it is the specific case of the Applicants that the returns have been filed by the Opponent No. 1 Trade Union with the Registrar of Trade Unions. The Statement of Accounts are also audited by the Auditor of the Opponent No. 1 Union. If there are some mistakes occured while filing such returns or Statement of Accounts, can those mistakes be viewed as manipulation of records is the question required to be determined in this proceeding.

18. While deciding the dispute referred U/s. 28 (1-A) of the Trade Unions Act, 1926, this Court is required to see whether any official of the Union is indulging in any fraud in relation to the working of the Union, as contended by the Applicants in Annex. 1 to 5 and manipulated the thing at their end while exercising such powers. The question further required to be determined is whether there are any irregularities in the Statement of Accounts and those irregularities at Annex. '3' to '5' of Exh. 32 are on account of the manipulation by the Opponents. Any act is fraudelent when there is some advantage on one side with the corresponding loss to the others. It may be said that when a promise is made without intention to perform it, is a fraud. It must be the act done to deceive someone. The present Applicants have impleaded the Opponent Nos. 2 to 6 as a party to this proceeding. According to the Applicants, for the lapses, mistakes, fraud or manipulation only these Opponent Nos. 2 to 6 are responsible. There is no dispute about the fact that the body of union Office-bearers consist of 25 persons including the Applicants. Thus the discrepancies of the Statement of Accounts and the Returns can not

be viewed as the manipulation of record, as contended by the Applicants or can not be viewed as a fraud. What evidence is offered by the Applicants in support of their abovesaid contention can be summarised as under :—

(*a*) That the Annual Returns for the year 1998, 1999 and 2000 filed in the Office of the Registrar of Trade Unions without the approval of the General Body and no explanation has been given why this was done.

(*b*) The Opening Balance in the Returns filed for the years 1998 and 1999 don't tally with the Closing Balances of the previous years as per Exh. U-34 Colly. and Exh. U-14 at Sr. No. 3.

(*c*) The Accounts for the year 1998 are not reconstructed as per the directions of the Auditor. The recongtructed accounts do not tally inasmusch as Exh. U-38 reflects the difference of Rs. 16864.

19. Form 'K' is at Exh. U-32. In Annx. '1' of this Form, the Applicants themselves have stated that "Can there be two Different Statement of Accounts for the year 1998. This itself shows that the President of the Union, General Secretary and Treasurer are mainpulating the things at their end. They are miscuing the powers given to them. "Annex. '2' of the same Form 'K' is making out the grievence that the General meeting could not held on or before 31st of March every year, but thereturns are filed. Another grievance that has been made out that the provision regarding petting cach of Rs. 3000 has been violated and instead of adopting the Account for every year, the Accounts for the year 1998, 99 and 2000 audited on 30th March 1999 and 11th April 2000. The inspection of the record not given to the Applicants. The Applicants have questioned about the various expenses shown under the items of Annex. '4' of Exh. U-32 *i. e.* 'K' Form. For example, postal, teletgram expenses, etc. In Annex. '5' same question is raised. In the Annex. 'Q' of Application Exh. U-1, summary of the irregularities given and Mr. Khanolkar who is the Opponent No. 3 and General Secretary of the Union was held responsible by the Applicants for all the irregularities. On close perusal of this consent certificate and the Annexures, there is nothing mentioned about the fraud with the specific allegations against any of the Opponent. The particulars of the fraud that has been committed by the Opponent has not been given in the Application or the evidence.

20. Issue No. I is about the manipulated Books of Accounts and Issue No. II is about the returns filed with the Registrar are false and bogus. Issue No. III is about misappropriation of the amount and Issue No. IV is about Opponent Nos. 2 to 6 committing criminal breach of trust. Issue No. V is about restraining the Opponent Nos. 2 to 6 from operating the Accounts of the Opponent Nos. 1 Union in the Bank and Issue No. VI is about the irregularities committed by the Opponents in calling the meetings and maintaining the Accounts of the Union.

21. Looking to the evidence of the matter, the Applicant Shri Vijay Chavan adduced his evidence at Exh. UW-1. Since 1986 he is working in the Bank. There are two Unions operating in the Bank of India, one is Bank of India Staff Union *i. e.* the Opponent No. 1 and the other is the Karmarchari Sena Union. Opponent Nos. 1 Union is the oldest one and functioning since last 50 years. Applicant is the Joint Seceretary of the Union.

22. In para 12 of his examination-in-chief, Applicant Shri Vijay Chavan has stated that he got the copies of the annual returns submitted by the Opponents in the Registrar's Office for the year 1998 to 2000, In May, 2001, he got those copies. He tallied the entries of the returns with the entries of the statement of accounts ans found that the entries are bogus and incorrect. How such a conclusion is drawn by him, that has not been clarified in a convincing manner.

Whatever grievances that have been made out by this witness regarding the irregularities in the maintainainance of the Accounts, and holding the meeting of the various bodies of the Union, these irregularities are also stated above, as per Annex. 1 to 5. The filing of the returns before the Registrar of Trade Unions is the routine work of the Opponent No. 1 Union which is being done since last 50 years.

23. There is a provision U/s. 28 of the Trade Union's Act, 1926 that the returns shall be sent annually to the Registrar Sec. 28 (4) empowers the Registrar for the purpose of examining the documents, to inspect the Account Books, Registers of the Trade Union. In the instant case, the returns of the year 1998 to 2000 have been accepted by the Competent Authority. The returns are prepared by the Auditor and submitted to the Registrar of the Trade Unions. Sec. 31 (2) of the Trade Unions Act make liable any person who willfully makes or causes to make any false entry in or any omission from the general statement, required by Sec. 28. Thus for failure to submit the returns, the penalty is prescribed under the Act. So also the penalty is prescribed for furnishing the wrong information to the Registrary of the Trade Unions. There is nothing on record to show that the Opponent Union has been penalised by the Registrar for doing such mischief.

24. On close perusal of the evidence of the Applicant Shri Chavan, it is further seen that the grievance has been made out by him that as per the general remarks of the Auditor given on 30th March, 1999, as Exh. U-37, the Auditor has certified that the returns filed with the Registrar of Trade Unions are correct. The declaration of the Auditor dtd. 30th March 1999 shows that the Auditor is unable to express the opinion on the true and correct aspect of the Statement. This declaration is at Exh. U-32. It appears from the general remarks at Exh. U-32 that he pointed out to the Union regarding the wrong postings of certain heads. In addition to the oral evidence, the affidavits at Exh. U-35 and U-39 are field by the Applicants pointing out the omissions, lacunas in the Account Books and other documents, of the Opponent Nos. 1 Union. In reply to this affidavit, the affidavit of Opponent No. 4 is filed by the Union at Exh. UA-28. After the perusal of the contents of these affidavits, it is seen that the Union had accounted the collection of levy and the position of the Account. The grievance that has been made out by the Applicants is that the collection of the levy has been shown on the higher side. If it is so, how that can be viwed as a fraud or misappropriation. If it is reflected in the Account Books, the amount of levy actually collected, how it can be presumed that some fraud or misappropriation has been taken place. If some mistakes are occured on account of some omissions, some entries are posted under the wrong heads, can it be said that the Accounts are manipulated. The contents of the affidavit at Exh. UA-28 alongwith the Annexures 1 to 6 and Annex. B of Exh. UA-28 clarify the doubts raised by the Applicants regarding the maintainace of vouchers, the amount of vouchers. Some of the vouchers are captioned with the contents narrating the purpose for which the amount is spent. The vouchers which are not signed by the recopient of the amount are supported with the bill and furthermore the person who is shown as recipient of the amount is not complaining anything that the amount of the voucher not received. The vouchers are not affixed with the revenue stamps, they are with incomplete narration, there are double payment vouchers, etc. are the points raised by the Applicants. These points are replied as per Exh. UA-28 and the clarification has been offered.

25. The wrong credits whenever came to be made that have been rectified. The Annual Returns for the year 1999 were duly filed after the Statement of accounts were prepared and audited by the Auditor. As the Returns were to be filed within a certain period, the errors occured therein and thereafter the Accounts came to be reconstructed, as per the explanation

given in the affidavit at Exh. UA-28. Similarly, the explanation has been offered about the P. F. amount of Smt. Vaz, Poofessional Tax and other cash withdrawals, payment of legal fees, meeting expenses, AGM expenses. In reply to the clarifications of vouchers for the years 1998, 1999 and 2000 everything has been made clear. In the cross-examination of the Applicant-Shri Vijay Chavan, he has been specifically asked about the exact amount of misappropriation done by Opponent No. 2 Shri J. J. Mahadeshwar or Opponent No. 3 Mr. Khanolkar. The witness could not give the tentative figures of the misappropriated and misused amounts by the Opponent No. 4 to 6 and Opponent No. 3. It is the matter of common sence that if the person is alleging fraud, misappropriation or manipulations, he must prove the facts by adducing the evidence on the judicial test. Whatever evidence has been adduced by the Applicants is not suffice to prove the allegations.

26. Being the responsible member of the Union, it has come on record that the Applicants have attended the meeting of the Union. Had there been commission of fraud of misappropriatoin, the complaint could have been lodged by him in the Police Station. He could have filed the Complaint before the Registrar. Had there been misuse of the amount of levy, the evidence could have been adduced by the Applicants to show the particular callection of the levy and the misappropriation of the particular amount of levy. In the evidence of the Applicant, such a material could not be traced out. In para 70 of his cross-examination the Applicant has stated that the evidence is at Exh. C-4, page No. 4. As per this statement, it is show that the Bank is crediting the levy amount of Rs. 30, 47, 751.53/-in the Union Account. Thus as per Exh. C-4 there is an evidence of crediting the levy amount and not the evidence of its misappropiation or misutilisation. The amount of levy came to be collected as per the directives given by the Apex bodies of the Opponent No. 1 Union.

27. Shri Vijay Chavan, Applicant has made out a grievance of technical nature. Para 79 of his cross-examination shows that as per the Cash-Book of the year 2000, it is not mentioned on page No. 69 that the donation of Rs. 5000 received by the Union. There is a mention on page No. 183 of the same Cash Book regarding the recipt of Rs. 501 on 17th November 2000 and Rs. 1001 on 21st November 2000 towards the donation. In the General Ladger of 2000, on Page No. 7, the above-said donation entries are reflected and the amount of Rs. 500 and Rs. 1502 shows towards the donation on page No. 7 of the General Ledger of 2000. This illustration is given just to show the technical nature of the irregularities pointed out by the Applicant. There are so many lacunas pointed out by the Applicant regarding the vouchers maintained by the Union. In para 82 of his cross-examination the Applicant Shri Vijay Chavan has stated that the Voucher No. 72 of Exh. U-36 is in his handwriting. He signed on the voucher and as per this voucher, he spent an amount of Rs. 25 for taxi travelling and Rs. 135 for bouquey. Though he stated that he gave the bill of the bouquey to the Treasurer, on page No. 159 of Exh. U-35 remarks are made by him that the bills not enclosed. He admitted about the receipt of the money of the bill of bouquey. He further admitted that he did not inform to the Union that he had submitted the bill of bouquey to the Treasurer. Similarly if the postal stamps are purchased by the Union, the Applicant is expecting bills thereof and for want of such bills, it is suspected by the Applicant that there must have been some misappropriation of the amount. The pragmatic approach is wanting in pursuing the proceeding of this case. One must see whether the postal authority is issuing the Bill for purchase of the postal stamps. Is there any practice prevailing in the Post-Office. If such practice is not whether it can be expected the bill for taxi travelling. When the Applicant's voucher of Rs. 160/- *i. e.* Voucher No. 72 of Exh. U-36 can be accepted by the Union on trusting him, why the Applicant don't want to trust his own Union as regards to the vouchers maintained by it.

28. In the evidence of Applicant's withness No. 2. Kalavati, it is stated that she being the Chief Manager of the Bank of India, Mumbai Main Branch, the document at Exh. C-4 prepared by the Bank. This document is the Statement under 3 heads. This statement is of the Current Deposit Account No. 10737 of the Opponent No. 1 Union. As per this statement, the levy collected, subscription levy collected and the subscription credited in the bank account is shown. In the cross-examination of this witness, she admitted that the Entry No. 3549 on page No. 6 of Exh. C-4 dtd. 31st May 2000 is wrong. The vouchers regarding this show that it is the levy amount. However, in the statement it is wrongly shown as subscription. Similarly the Voucher dtd. 11th April 2000 for Rs. 5400 not specifying whether it is a levy or subscription and this withess has admitted about the other mistakes occured while preparing the document at Exh. C-4 and despite of that the Applicant No. 1 is stating that Exh. C-4 is the proof of misutilisation of levy.

29. The Applicant's thierd witness Shri Jyotiba Dattu Raymane actually prepared the statement of Exh. C-4. He had checked the individual vouchers and obtained the xerox copies of those vouchers. The vouchers are accompanying with this statement. In his cross-examination, this witness has admitted that the voucher dtd. 8th June 2000 bearing No. 12510 is for the amount of Rs. 53097. He cannot tell how much is the levy amount and the amount of subscription from this total amount of Rs. 53097. Thus the Applicant's own witnesses have committed the mistake while preparing the statement of Exh. C-4 and if such mistakes occured while maintaining the accounts of the Union or submitting the Returns of the Union, it cannot be said by any stretch of imagination that there is a misappropriation of the amount and a fraud committed by the Office-bearers of the Union.

30. In the affidavit at Exh. U-39, Applicant Shri Vijay Chavan has stated that in Ledger No. 3 for the year 1998, the Opponents have shown Rs. 11600 as wages paid to one employee Mrs. J. Vaz. The wages for the period January to December 1998 has been shown as Rs. 1, 15, 085. 72, which includes Rs. 11, 600 as if paid on 20th March 1998. Under the head of E.P.F. A/c. this amount of Rs. 11,600 shown seperately. The Account of PPF of the employee of the Union Mrs. J. Vaz if opened, what is wrong in it. Is there any bar under any Act to pay the P. F. to a single employee of the establishment.

31. In the evidecne of the Opponents at Exh. UAW-1, page No. 32 onwards shows that in reply to Exh. U-35 and U-39, affidavits filed by the Applicants, the affidavit at Exh. UA-28 is filed Annex. 'A' and 'B' of Exh. UA-28 are prepared from the Books of Accounts maintained by the Union. The total levy collected from the members amongst 155 branches or Offices credited to the Union. The approximate amount of which is Rs. 35, 94,000. The deduction of this levy has been made at each of the baranch. If the amount credited by each of the Bank is to be verified, that can be verified from the correspondig documents or Registers maintained by each of the branch of the Bank. This amount of levy was credited in the Account of the Union. If the Bank Official of the said Bank while giving the evidence before the Court are admitted that there are wrong postings of certain entries and the particular amount cannot be said whether it is the amount of levy or subscription, then, it is but natural to say that such wrong postings of entry can make the difference in the Opening or Closing Balance. In the cross-examination of Exh. UAW-1, he admitted in para 14 that the returns of the year 1998 were filed with the Registrar in the year 1999 as per Exh. U-34. The opening balance of this return is shown as Rs. 12, 67, 256. 60. As per the Opening Balacne of the General Fund, the difference is of Rs. 14,905. The statement of account of the year 1998 circulated to the members of the Union in 2001 prior to holding of the AGM, the Closing Balance of the year 1997 and the Oppning of the year 1998 circulated to the members as per the statement of account are same. There is a difference in

the Closing Balance of annual returns of the year 1998 and the Closing Balance of the General Fund shown in the statement of account of the year 1998. Thereturns of the year 1997 is signed with the declaration of the Auditor filed at Exh. U-14 and there is a declaration by the Auditor regarding the statement and figures in the returns are true and correct. No such mistake was pointed out by the Auditor in the above-said declaration. A seperate opinion is given by the Auditor pertaining to the year 1997 and the correctd returns of the same was not field before the Regisrtrar for the year 1997. Thus this explanation given by the witness is required to be relied upon. The returns of the year 1997 were field with the Registrar. As pointed out earlier, furnishing the false information in the returns can be penalised by the Registrar. That Authority has accepted the returns.

32. In para 50 of the cross-examination at Exh. UAW-1, he admitted that the Petty Cash Book is showing a column of total monthly expenses. The Petty Cash Book is maintaining the account of out-going expenses. On each of the vouchers, certain questions are put to this witness UAW-1 is para Nos. 51 and 52 of his cross-examination. The vouchers are not supported with the documents are also shown to the witness, but there is nothing elicited in his cross-examination to support the charges of fraud, misappropriation and manipulation.

33. The entries in the Accounts are not the evidence *per-se*. What is necessary to show that the account books have been regularly kept in the course of business. The honest appearance of book is more important. When the instant proceeding was filed, the Opponent Union produced all the relevant Registers before the Court which clearly shows that whatever record that was maintained was brought before the Court. In the evidence of the Applicant, it has come on record that the Opponent No. 1 Union has prepared all this record subsequent to the filing of this proceeding. There appears no element of truth in this allegation. The documents *viz*. Petty Cash Book, General Ledger and the Cash Book maintained by the Union, those Registers are found tallying with the Vouchers, Receipts, Bank Statement, While maintaining such Account, there may be some omissions in preparing the vouchers. That does not mean that the Accounts itself are manipulated. What is important is that whether the Accounts are being maintained in the general course of business and whether these Accounts are offering corroborative evidence. Applying this criteriar to the Registers maintained by the Union, I find that there is nothing for doubting the bonafides of maintaining the Accounts by the Union. In view of the numerous transactions spreadover for the period of 3 years *viz.* 1998 to 2000, it is not necessary to discuss each and every entry. That will be mere wastage of time to have its contents represented here. While cross-examining the Opponent's witness, I repeatedly pointed to the Learned Counsel of the Applicant that there is no point in putting the contents of the vouchers to the witness as it is admitted by the Union that these are the vouchers maintained by them. Had there been any doubt in the mind of the Applicant regarding the particular vouchers, the proper procedure was to call the person concerned in the evidence, who is competent to speak the genuineness or bogus nature of it. Thus the transaction as they occured are reflected in the General Ledger, out going expenses in the Petty Cash Book and entries of the deposits in the Cash Book. The Law does not fix any precise instance regarding the entries of the particular transaction required to be made at a particular time. As pointed out earlier, there is nothing on record to show that there is wrongful conversion of property for one's own use or there is any fraudelent conversion or receiving any possession of the money or property of the Union or the manipulation of any record to turn to one's own purpose or advantage.

34. Meeting being not hled in time, non-availability of the account books for inspection are the other aspects of the matter. The minutes of the meetings and the registers of the meetings held by the Union *i. e.* A. G. M., the meetings of the managing comittee, are placed on record, *i. e.* Exh. UA-38-Minutes Book of the managing committee meeting for the year 1998, UA-89-Minutes Book for the year 1999. UA-44, Attendance Register, UA-41-minutes book of Office-bearers meeting of 2000, UA-43-Attendance Register of 1998 and the Attendance Register of AGM Meeting fo 1998 is at Exh. UA-45. Similarly the General Ledger of 2000 at Exh. UA-37, Petty Cash Book of the same year at Exh. UA-36, General Ledger of 1998 at Exh. UA-31, General Ledger for the year 1999 at Exh. UA-34 are on record. Whenever the meetings atteneded by the Applicant, in token of their attendance, their signatures are taken on the sheet of paper which came to be pasted and in some cases, sign tures are taken directly on the Registers in token of attendance of the meeting. This practice is not uniformly followed and there appears the lapses in holding the meetings. But, it is the generall axity of the Trade Unions and the meetings are irregularly hled. The minor discrepancies are there, that can be viewed as a technicality. Trade Unions are the Association or Oraganization of the workers, Their primary object is to promote the social, econmical and political interest of the workers. Their endeavour should be to promote the solidarity, brotherhood and paternal feelings and inculcate in the members the feeling that should be subordinated to the collective and well-being of the members. The Trade Unions Act itself spell about the procedure for getting a Trade Union registered and the circumstances under which the registration can be cancelled, are Union can function. It also prescribes the Registers which are to be maintained by the Trade Union as per the Regulations of 1927. If the Opponent Union is maintaining those Registeres, what type of maintainance of accounts is expected by the Applicants. Under the Trade Unions Act, any 7 members of a Trade Union can get the Union registered by complying with the statutory requirements. Such a provision pave way for multiplicity of Unions in an individual establishment especially in view of the fact that the Indian Trade Unions were born in Politics and live and grow in politics, as stated by Shri V. B. Karnik in his Book on Trade Unions Act-Politics. The present proceedings seem to be the outcome of the internal rivalry. As stated by Shri Ramanudhan in Honey-Bee towards a New Culture in Industrial Relations, each trade Unions are leader-based and the leader himself is based somewhere else. Consequential realisation of the constitutional imperatives remains a distant dream and teasing illusion for even the orgainsed wroking-class. It is feared by the Author that the outsiders enter the Trade Union's Exedutive Body as Savouirs servant and start exploiting the working as leaders and this is a new kind of exploitation the workers are exposed to.

35. While restoring the registration of the Union against the Order of cancellation, it was observed by the Hon'ble High Court in First Appeal No. 1099/98 that the Registrar to comply with the provisions of Sec. 10 (b) of Tarde Union's Act. As per this section, minimum 2 month's notice is required to be given before the cancellation of registration. The Registrar also failed to prove that notice was served on the Opponent Union. EPAR could not be produced before the Hon'ble High Court. It seems that while giving the consent cretificate of Exh. U-33, the Registrar did not give an opportunity to the Opponents as per the grievance made out by the parties before me. The Opponent Union was simply allowed to file the reply. The Opponent Union has further stated that they could have convinced the Registrar had there bein such a opportunity being given to them. Thus the administrative order came to be passed, which resulted into such a wasteful litigation. So far as the Applicants are concerned, before filing the case against thier own union, they could have set-right the matter at the leval of the Registrar, itself. There is no question of about doubting the bonafides of the Applicants. It they are so much

interested in advancing the interest of the members, they could have set-right the things by effectively participating in the meetings instead of spending money in the litigation expenses. There is no point in keeping any member of the Union in dark about their own funds. It is required to be spent in such a manner that the Office-bearers should realise that each and every paisa collected from them, is well utilised. The Office-bearers of the Union must observe such transperancy. There is no reason to dominets the voice of the minority members and there must be maintainance of Accounts in such a manner that everyone must be sutisfied about its authencity. One can understand the difference between the *bonafide* grievance and baseless allegations. Thus the irregularities and the errors occured in the maintainance of accounts can be avoided.

36. As per clause 21 (*a*) (*iii*) of the Constitution of the Opponent Union, it is incumbant to elect the Office-bearers, Members of the Managing Committee and members of the General Council. As per the order of the Hon'ble Division Bench in Writ Petition No. 588/2002, it has been observed that the term of the present Office-bearers is going to expire on 31st March, 2002 and fresh elections may be conducted. During the course of this proceeding, it seems that the Opponent No. 1 Union wanted to hold the elections.

37. The Learned Counsel of the Applicants Shri V. P. Vaidya submitted with vehemence that u/s. 28 (*1-A*) of the Trade Unions Act, 1926 property of a Union includes the Accounts Books of any Registered Trade Union. Property of the Union is reflected in the Account Books While maintaining such accounts, there is a breach of Trust, misappropriation, fraud occured, improper maintainance of the Account Books as well as the irregularities in holding the meetings of the various bodies of the Union and the maintainance of the record thereto is undoubtedly included in the property of the Union. The Learned Counsel has emphatically submitted that this proceeding can be entertained by the Court as the word " property" has got a wide connotation. The Learnd Counsel further submitted that there is a clear deviation of the prevailing custom and practice while writing such Accounts and conducting the business of the Opponent No. 1 Union. Regulation 18 (A) of the Bombay Trade Unions Regulations, 1927 lays about the Books and Registers to be maintained by the Union. These are the Registers of membership and subscription in Form 'J', Register of receipts and disbursements for the General Fund Account, minutes book to record the proceedings of all meetings, Register of stock, tools and plant to show the furniture, fittings and valuable documents relating to the immovable property of the Union, machine numbered subscription book, register of receipts and disbursement for the political fund (if there is political fund) and a file of vouchers. Thus the grievance has been made out by Shri Vaidya, Learnd Counsel for the Applicants is that the account books which are to be maintained in a particular format, such account books are not maintained and there is a failure on the part of the General Secretary of the Opponent No. 1 Union in this respect. There is a failure on his part to submit the true and correct returns to the Registrar of the Trade Unions. There is a violation of the rules regarding the limits of the petty cash at hand. The consent certificate at Exh. U-32, at Annex. 'O' to U-1 is issued by the Registrar in favour of the Applicants on account of such irregularities. Exh. U-32 is a Form No. 'K' with Annexures I to V clearly showing that there was not proper mainainance of Accounts by the Union. The Learnd Counsel has also pointed out to me the circulated statements at Exh. U-29, the returns filed before the Registrar at Exh. U-34, the summary of the difference of amount prepared by the Applicants at Annex. 'Q' and the rectified returns at Exh. U-37.

38. The fact that the Union is required to file three different statements with the different figures *i. e.* the circulated statements given to the members at the time of the meeting dated 12th April 2001, the returns filed with the Registrar of Trade Unions for the year 1998 to 2000 and the rectified statement for the abovesaid period. These three set of statements is the fact which is self-indicative to suggest that there was a negligence in the maintainance of accounts and lack of responsibility on the part of the Opponents in circulating the incorrect statement of accounts amongst its members. It is nothing, but the wilful filing of false record. It clearly goes to show that there is a manipulation in the accounts. It is submitted by the Learnd Counsel that the returns filed on 30th March 1999 with the Registrar of Trade Unions, on the same day the letter dated 30th March 1999 received from the Auditor and this letter of general remarks of the Auditor disclosing that the Accounts are to be rectified in certain areas. This itself is the wilful filing of the incorrent record. The rectification of the statement of accounts was made on 28th April 1999. This is the just interest of the Opponent No. 1 Union, the accounts are not maintained properly.

39. It is submitted by the Learnd Counsel of the Applicants that the vouchers prepared are not with the supporting documents. The recipent of the amount did not sign the vouchers. The vouchers are lacking in necessary narrations and particulars. There are duplicate vouchers for double payment *i. e.* Voucher Nos. 54, 57, 58, 59 of the year 1998. There is a clear breach of duty casted on the Opponents. In view of the breach of duty in maintainance of the accounts and vouchers, there is a scope for manipulation. The main grievance that has been made out by the Learnd Counsel is that the amount has been spent and the expenses incurred by the General Body without sanction of the Manging Committee is highly objectionable. It causes breach of the Constitution of the Opponent Union. Exh. UA-36 is the Petty Cash Book which shows that there is a withdrawal of the Petty Cash of Rs. 38,000 and the expenses of Rs. 13,553 only accounted for this withdrawal, no explanation is offered about the dificit amount. There is no explanation regarding the collection of Rs. 5 lacs as conference levy. As per Exh. UA-39 *i.e.* Minutes Book, this levy of Rs. 5 lacs paid on 28th November 2000 and the resolution to adopt this act came to be passed on 16th April 2001, Thus such a huge amount of Rs. 5 lacs parted without the sanction of the Managing Committee. As per clause 18 (*J*) of the constitution at Exh. UA-49, expenditure of the Union shall not be more than 1/4th of the total Union's income. The illegal expenses of levy and conference levy will not fall into any of the category of Clause 18 (*1*) to (*k*) except (*J*) of the Constitution of the Opponent No. 1 Union. The Learned Counsel has submitted that such donation cannot be made. Such being a dispute in nature, this Court has got the power to pass the necessary order in the matter to rectify the irregularities. The payment don't tally with the vouchers. Meetings of the Union are not called regularly and no revenue stamps are attached on the vouchers. The Accounts are not adopted by the General Body as per the general remarks of the Auditor, it is pointed out by him that there were lacunas. All these irregularities simply show that there is a suspicious account procedure followed by the Union.

40. The Learned Counsel Shri A. P. Kulkarni for the Opponent Union has argued that Sec. 28 (*1-A*) has been inserted in the Trade Unions Act, 1926 in February, 1969. The specific purpose of it was to safeguard the property of the Union when there is a wrongful dispossession of it on account of a dispute in between two Unions as to the possession of the property. The present dispute of improper maintainance of accounts is not at all covered within the ambit and

purview of sec. 28 (*1-A*) of the Trade Unions Act. It is submitted by the Learned Counsel that this Court cannot give any directions regarding the improper maintainance of accounts on this count. The Learned Counsel simultaneously added that the Opponent No. 1 Union has maintained its Accounts in a proper manner and the maintainance is above board. On its own gesture, the Opponent No. 1 Union has produced all the documents as it exists. There was nothing to hide or fishy or fraudelent on the record. The Applicants being a part of the Office-bearers of the Opponent No. 1 Union must share their responsibilities if there are any lapses. The Learned Counsel has submitted that is not expected from the Trade Union to maintain the accounts like the Firm of Auditor. As per the pleadings of the Applicants, there are not specific allegations of fraud or misappropriation. There is much hue and cry about the pasted signed papers on minutes-book and the other documents (To show the attendance of members in the meetings beld by the Union). There is nothing wrong in following this practice. It is not the say of the Applicants that they did not attend the meetings. The Applicants cannot disown their signatures. In token of the attendance of the meetings held by the Union, the Applicants have signed the Attendance Register and also put the signatures below their name by some of the Applicants. Whatever levy that has been collected, it has been shown. The Union is maintaining the Cash Book for the cash deposited with it. The Petty Cash Book in maintained for the outgoing expenses and the General Ledger is reflecting all the transaction of the Opponent No. 1. Where is the question of manipulation of any Accounts, as per the Learned Counsel of the Opponents.

41. In the written notes of the arguments at Exh. UA-53, it is submitted by the Learned Counsel of the Opponent that the general ledgers reflect all the entries in the cash book and show the balance of individual accounts under various heads and there has been proper accounting. The details of the receipt and payments are incorporated from page No. 31 onwards of the notes of arguments. Similarly the Petty Cash A/c. for the year 2000 is given as per Annex. 'A' and 'B' of the Exh. UA-53. The Learned Counsel is relying upon the judgment sreported in *2002 (I) LLN page 335* (P. Appa Servai *v/s.* Commissioner of Labour and Ors.); *2002 II CLR 326* (J. M. Biswas *V/s.* N. K. Bhattacharjee and Ors.); 1979 (39) *FLR 70* (Bhankar Chakravarti *V/s.* Britannia Biscuit Co. Ltd. and Anr.); *1981 I LLJ 381*(S. S. Sharma and Ors. *V/s.* Union of India and Ors.); 1973 (27) F*LR 444* (Glaxo Laboratories (India) Ltd. *V/s.* Glaxo Staff Association) ; *AIR 1988 S. C. 1274* (Laxmi Raj Shetty and anr. *V/s.* State of Tamil Nadu) and 1*996 I LLJ 639* (Maharashtra Shramik Sena *V/s.* Gabriel India Ltd. and Ors.).

42. It is contended on behalf of Learned Counsel for the Applicants that in the judgment reported in *AIR 1988 1274* that the ruling is regarding the criminal trial. Here the dispute is of civil nature. The standard of proof in criminal trial is different. The ingredients are required to be proved beyond reasonable doubt and in a civil dispute there can be evidence by pre-ponderence of facts and circumstances. Similarly in the ruling of *1996 I LLJ 639,* it has been held that the deviation in three monthly meeting envisaged under the MRTU and PULP Act, 1971 is not sacrosanct. But if no meetings are at all held of managing committee as per the persent case, it would amount to dereliction of constitutional duties, as per the Learned Counsel of the Applicants. As per the imports of the above said rulings there are various guidelines given to the lower Courts and these guidelines are complied with while appreciating the evidence of this case. Opponent Nos. 2 to 6 cannot be restrained from operating the Account of the Opponent Union till the ensuing elections are held. hence I answer the Issue Nos. I to VI in the Negative.

43. *Issue No. VII*.—Now the question is whether the present proceeding is frivolously filed to harass the Opponents. There is no question of filing the proceeding in a vexatious manner. There was the *bonafide* reason for the Applicants to question the atuthority of the General Secretary and the other officials regarding their dominating role. The Applicants being the members of the Union, have got every right to know about their funds. The Union may have the membership of 3000 and some odd employees. Except the Applicants there may not be any other member questioning the conduct of the business and the manner of maintaining the Acccounts by the Union. That does not mean that the Applicants cannot question it. Hence, it cannot be said that the proceeding is frivolous or vexatious. Hence, I answer the Issue No. VII in the Negative.

44. It is needless to say that the elections of the Opponent No. 1 Union are due and the Opponent No. 1. Union can hold it in a fair manner. There is no distrust of any nature about that. However, it must appear that the elections are held in a fair and proper manner and to save the Opponent No. 1 Union from further allegations it is necessary to direct the Registrar to hold the elections of the Opponent No. 1. Union either by himself or through his nominee, within the period of six months. The Opponent No. 1 Union can take the necessary steps in that direction. Hence, I deem it proper to pass the following Order :—

Order

(*i*) Application stands dismissed with no order as to costs.

(*ii*) The Registrar of Trade Unions to hold the elections of the Opponent No. 1 Union either by himself of through the nominee appointed by him, within a period of six months from the date of this Order.

(*iii*) The documents which are required for holding the elections can be returned to the Opponent No. 1 Union, after substituting the xerox copies of the same.

(iv) Copy of this judgment be sent to the Registrar of Trade Unions, Office of the Additional Commissioner of Labour, Commerce Centre, Tardeo, Mumbai 400 034.

V. P. ROTHE
Member,
Industrial Court, Maharashtra
Mumbai.

Dated the 3rd August 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai
Dated the 3rd September 2002.

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